

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**  
FRANCIS M. GREGOREK (144785)  
gregorek@whafh.com  
BETSY C. MANIFOLD (182450)  
manifold@whafh.com  
RACHELE R. RICKERT (190634)  
rickert@whafh.com  
MARISA C. LIVESAY (223247)  
livesay@whafh.com  
750 B Street, Suite 2770  
San Diego, CA 92101  
Telephone: 619/239-4599  
Facsimile: 619/234-4599

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**  
JANINE L. POLLACK  
pollack@whafh.com  
DEMET BASAR  
basar@whafh.com  
KATE M. MCGUIRE  
mcguire@whafh.com  
270 Madison Avenue  
New York, New York 10016  
Telephone: 212/545-4600  
Facsimile: 212/545-4653

**WESTERMAN LAW CORPORATION**  
JEFF S. WESTERMAN (94559)  
jwesterman@jswlegal.com  
1900 Avenue of the Stars, 11th Floor  
Los Angeles, CA 90067  
Telephone: 310/698-7880  
Facsimile: 310/775-9777

**LEVI & KORSINKSY LLP**  
EDUARD KORSINSKY  
ek@zlk.com  
SHANNON L. HOPKINS  
shopkins@zlk.com  
NANCY A. KULESA (*pro hac vice*)  
nkulesa@zlk.com  
STEPHANIE A. BARTONE (*pro hac vice*)  
sbartone@zlk.com  
30 Broad Street, 24<sup>th</sup> Floor  
New York, NY 10004  
Telephone: 212/363-7500  
Facsimile: 866/367-6510

Interim Co-Lead Class Counsel  
[Additional Counsel Appear on Signature Page]

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION**

	)	Case No. CV 14-00428-MMM (RZx)
	)	
	)	<b>SECOND CONSOLIDATED</b>
	)	<b>AMENDED COMPLAINT FOR</b>
	)	<b>VIOLATIONS OF: (1) CAL.</b>
	)	<b>CONSUMERS LEGAL</b>
	)	<b>REMEDIES ACT; (2) CAL.</b>
	)	<b>UNFAIR COMPETITION LAW;</b>
	)	<b>(3) FLORIDA DECEPTIVE AND</b>
	)	<b>UNFAIR TRADE PRACTICES</b>
IN RE NJOY, INC. CONSUMER		
CLASS ACTION LITIGATION		

1 ) ACT; (4) N.Y. GEN. BUS. LAW;  
 2 ) AND (5) BREACH OF EXPRESS  
 3 WARRANTY

4 **Class Action**

5 **DEMAND FOR JURY TRIAL**

6 Plaintiffs Ben Z. Halberstam (“Plaintiff Halberstam”) and Eric McGovern  
 7 (“Plaintiff McGovern”) (collectively with Halberstam, “California Plaintiffs”),  
 8 Kathryn Thomas (“Plaintiff Thomas” or “Florida Plaintiff”), and Paula Kolano  
 9 (“Plaintiff “Kolano” or “New York Plaintiff”), (collectively, all plaintiffs are  
 10 hereinafter “Plaintiffs”), by and through their undersigned attorneys, bring this  
 11 action on behalf of themselves and all others similarly situated, based upon personal  
 12 knowledge as to themselves and their activities, and on information and belief as to  
 13 all other matters, against defendants, NJOY, Inc. and Sottera, Inc. (collectively,  
 14 “NJOY”<sup>1</sup> or “Defendant”), and allege as follows:

15 **JURISDICTION AND VENUE**

16 1. Diversity subject matter jurisdiction exists over this class action pursuant  
 17 to the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005),  
 18 amending 28 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction  
 19 over class actions involving: (a) 100 or more members in the proposed class; (b)  
 20 where at least some members of the proposed class have different citizenship from  
 21 some defendants; and (c) where the claims of the proposed class members exceed  
 22 the sum or value of five million dollars (\$5,000,000) in the aggregate.  
 23 28 U.S.C. §§ 1332(d)(2) and (6).

24 2. While the exact number of members in the proposed classes is unknown at  
 25 this time, Plaintiffs have reason to believe that thousands of consumers purchased  
 26 Defendant’s electronic cigarettes (or “e-cigarettes”) throughout California, Florida

27 <sup>1</sup> Sottera, Inc. was formerly the parent company of NJOY, Inc. and was wholly  
 28 merged into NJOY, Inc. in July 2012.

1 and New York during the relevant period.<sup>2</sup> The number of members in the proposed  
2 California, Florida and New York classes (defined below) can be discerned from the  
3 records maintained by Defendant.

4 3. Diversity of citizenship exists between Plaintiffs and Defendant. Plaintiffs  
5 Halberstam and McGovern are citizens of California, and Plaintiff Halberstam  
6 resides in Los Angeles, California, and Plaintiff McGovern resides in Orange  
7 County, California. Plaintiff Thomas is a citizen of Florida and resides in  
8 Jacksonville, Florida. Plaintiff Kolano is a citizen of New York and resides in West  
9 Babylon, New York. NJOY is incorporated in Delaware with its corporate  
10 headquarters located at 15211 North Kierland Boulevard, Suite 200, Scottsdale,  
11 Arizona 85254. Sottera was formerly incorporated in the state of Nevada and was  
12 headquartered at 15211 North Kierland Boulevard, Suite 200, Scottsdale, Arizona  
13 85254. Therefore, diversity of citizenship exists.

14 4. While the exact damages to Plaintiffs and the Classes are unknown at this  
15 time, Plaintiffs reasonably believe that their claims exceed five million dollars  
16 (\$5,000,000) in the aggregate.

---

27 <sup>2</sup> The relevant period for each claim in this Complaint is set forth in the Counts, *infra*.

1           5. Jurisdiction over the Florida and New York Plaintiffs is proper pursuant  
2 to Section 28 U.S.C. § 1367, which provides, in relevant part, that: (a) “in any action  
3 of which the district courts have original jurisdiction, the district courts shall have  
4 supplemental jurisdiction over all other claims that are so related to claims in the  
5 action within such original jurisdiction that they form part of the same case or  
6 controversy under Article III of the United States Constitution ... includ[ing] claims  
7 that involve the joinder ... of additional parties.”

8           6. This Court has personal jurisdiction over Defendant because Defendant  
9 has purposefully availed itself of the privilege of conducting business in the State of  
10 California.

11           7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because many  
12 of the acts and transactions giving rise to this action occurred in this District and  
13 because Defendant:

- 14           a. has intentionally availed itself of the laws and markets within this  
15           District through the promotion, marketing, distribution and sale of its  
16           products in this District;
- 17           b. does substantial business in this District; and
- 18           c. is subject to personal jurisdiction in this District;

19 and because Plaintiffs Halberstam and McGovern:

- 20           a. were exposed to Defendant’s misleading practices and representations  
21           in this District; and
- 22           b. purchased NJOY E-Cigarettes (as defined below) in this District.

23           8. Venue is proper in this Court as to the Florida and New York Plaintiffs  
24 and Claims under the doctrine of pendent venue.

25                                   **NATURE OF THE ACTION**

26           9. Defendant, the manufacturer of the NJOY brand of electronic  
27 cigarettes, has a uniform and long-standing pattern of employing unfair and  
28

1 deceptive practices with respect to the sale of its products through  
2 misrepresentations and omissions concerning the potential health risks thereof.  
3 During the relevant period, NJOY manufactured and sold, among others, NJOY,  
4 NJOY Kings, and OneJoy e-cigarettes. These, together with related paraphernalia  
5 such as NJOY replacement batteries, chargers, and cartridges, are collectively  
6 referenced herein as “NJOY E-Cigarettes.” For example, one of Defendant’s  
7 principal marketing slogans has been that its NJOY E-Cigarettes provide  
8 “everything you like about smoking without the things you don’t,” and variations of  
9 that statement. This is deceptive, false and misleading because it is not true that  
10 NJOY E-Cigarettes are “without the things you don’t” like about traditional tobacco  
11 cigarettes. Studies have shown that electronic cigarettes, including NJOY E-  
12 Cigarettes, contain disease-causing substances that are dangerous to your health –  
13 which are among the most important “things you don’t” like about traditional  
14 tobacco cigarettes. In fact, despite Defendant’s marketing slogan that its NJOY E-  
15 Cigarettes are “without the things you don’t” like about traditional tobacco  
16 cigarettes, which conveys the impression that NJOY E-Cigarettes carry no risk of  
17 and do not cause disease as traditional tobacco cigarettes do, Defendant fails to  
18 disclose not only what it should know about the contents of its own products, but  
19 that numerous studies have shown that electronic cigarettes, including NJOY E-  
20 Cigarettes, contain carcinogens, toxins and other impurities (including some of those  
21 also found in tobacco cigarettes) that do carry the risk of and cause disease. Studies  
22 also show that certain electronic cigarettes, including NJOY E-Cigarettes, require  
23 that the user take deeper puffs to produce vapor than the puffs required for a  
24 traditional tobacco cigarette, and that this could be harmful to users’ health.  
25 Furthermore, there is widespread agreement in the scientific community that further  
26 research is necessary before the full negative effects of electronic cigarette use on  
27 users’ health can be known.

1           10. Defendant has employed numerous methods to convey to consumers  
2 throughout the United States its deceptive, false and misleading message about its  
3 E-Cigarettes, including its packaging, product inserts, and print advertisements, as  
4 well as its website through which it sells its product directly to the public. NJOY,  
5 <http://www.njoy.com/njoy-kings/njoy-king-3-pack.html> (last visited Jan. 7, 2014).

6           11. As a result of Defendant's deceptive, false and misleading claims in its  
7 advertising, consumers – including Plaintiffs and the other members of the proposed  
8 Classes – have purchased NJOY E-Cigarettes without being advised that they  
9 contain a variety of toxins, impurities, and related potential health hazards as found  
10 by various studies discussed in more detail below. Had Defendant disclosed these  
11 material facts, Plaintiffs would not have purchased Defendant's NJOY E-Cigarettes.  
12 Defendant was able to charge more than what its NJOY E-Cigarettes would have  
13 been worth had it disclosed the truth about them.

14           12. Plaintiffs bring this lawsuit against Defendant, on behalf of themselves  
15 and the proposed Classes, in order to: (a) halt the dissemination of Defendant's  
16 deceptive advertising messages; (b) correct the false and misleading perception  
17 Defendant has created in the minds of consumers through its representations and  
18 omissions; and (c) secure redress for consumers who have purchased one or more  
19 NJOY E-Cigarettes. The California Plaintiffs, on behalf of themselves and the  
20 proposed California Class, allege violations of the Consumers Legal Remedies Act,  
21 California Civil Code §§ 1750, *et seq.* ("CLRA"), the California Business &  
22 Professions Code §§ 17200, *et seq.* ("UCL"), and breach of express warranty in  
23 violation of Cal. Com. Code § 2313 and common law. The Florida Plaintiff, on  
24 behalf of herself and the proposed Florida Class, alleges violations of the Florida  
25 Deceptive and Unfair Trade Practices Act, Florida Statute §501.201, *et seq.*  
26 ("FDUPTA"), and breach of express warranty in violation of Florida Statute  
27 §672.313 and common law. The New York Plaintiff, on behalf of herself and the  
28

1 proposed New York Class, alleges violations of the New York General Business  
2 Law § 349 (“GBL”) and breach of express warranty in violation of N.Y. U.C.C.  
3 Law § 2-313 and common law.

4 **PARTIES**

5 ***Plaintiffs***

6 13. Plaintiff Halberstam is an individual who resides in Los Angeles,  
7 California and is a citizen of California.

8 14. Plaintiff McGovern is an individual who resides in Orange County and  
9 is a citizen of California.

10 15. Plaintiff Thomas is an individual who resides in Jacksonville, Florida  
11 and is a citizen of Florida.

12 16. Plaintiff Kolano is an individual who resides in West Babylon, New  
13 York and is a citizen of New York.

14 17. During the relevant period, Plaintiffs, while in the states of California,  
15 Florida and New York, were exposed to and saw Defendant’s material, deceptive  
16 marketing claims and packaging. As a result of that misleading marketing and  
17 packaging and Defendant’s omissions, Plaintiffs believed that NJOY’s products did  
18 not carry dangers or risks like traditional cigarettes do. While in the states of  
19 California, Florida and New York, Plaintiffs purchased NJOY E-Cigarettes. Had  
20 Defendant disclosed that NJOY E-Cigarettes contain a variety of toxins, impurities,  
21 and related potential health hazards which are or should be known to Defendant, and  
22 as found by various studies discussed in more detail below, including some also  
23 found in tobacco cigarettes, Plaintiffs would not have purchased Defendant’s NJOY  
24 E-Cigarettes. Thus, as a result of Defendant’s material deceptive claims and  
25 omissions, Plaintiffs suffered injury in fact and lost money.

26 18. Plaintiff Halberstam first purchased NJOY E-Cigarettes in September  
27 2013, at Walgreens located at 8770 W. Pico Blvd., Los Angeles, California. He  
28



1 purchased NJOY Kings disposable E-Cigarettes. He thereafter intermittently  
2 purchased additional NJOY Kings. In total, Plaintiff Halberstam purchased  
3 approximately five NJOY E-Cigarettes for which he paid the retail market price for  
4 each, which he believes was \$7.99. On information and belief, during the relevant  
5 period the price was first \$7.99 and later changed to \$8.99 for a single disposable  
6 NJOY Kings E-Cigarette.

7 19. Plaintiff McGovern purchased NJOY E-Cigarettes in Orange County,  
8 California in or around December 2013. He purchased NJOY King, Menthol Gold  
9 at the 7-Eleven store on 2244 Fairview Road, Costa Mesa, California; the 7-Eleven  
10 store at 2150 Placentia Ave., Costa Mesa, California 92627; and the 7-Eleven store  
11 at 9502 Hamilton Ave, Huntington Beach, California 92646. He thereafter  
12 intermittently purchased additional NJOY E-Cigarettes until January 2014. Plaintiff  
13 McGovern paid the retail market price for each NJOY E-Cigarette, which he  
14 believes was approximately \$7.99. On information and belief, during the relevant  
15 period the price was first \$7.99 and later changed to \$8.99 for a single disposable  
16 NJOY Kings E-Cigarette.

17 20. Plaintiff Kolano first purchased NJOY E-Cigarettes in or around  
18 January 2012 at 7-Eleven located at 915 Straight Path, in West Babylon, New York,  
19 and also purchased them at 7-Eleven located at Route 109, in West Babylon, New  
20 York. She purchased NJOY Kings E-Cigarettes. She thereafter intermittently  
21 purchased additional NJOY Kings. In total, Plaintiff Kolano purchased between 20  
22 and 30 single packs of NJOY Kings for which she paid the retail market price for  
23 each, which she believes was \$8.99.

24 21. Plaintiff Thomas first purchased NJOY E-Cigarettes in the summer of  
25 2012, at a Kangaroo Express store located at 3051 Monument Road, Jacksonville,  
26 Florida. Plaintiff Thomas purchased approximately one NJOY OneJoy for which  
27  
28



1 she paid the retail market price, which she believes was \$10.99. On information and  
2 belief, the price was \$10.99 for a single OneJoy E-Cigarette at all relevant times.

3 ***Defendant***

4 22. Sottera, Inc. is or was a corporation incorporated in the state of Nevada,  
5 and had its corporate headquarters at 15211 North Kierland Boulevard, Suite 200,  
6 Scottsdale, Arizona 85254. Upon information and belief, it was parent to NJOY,  
7 Inc., and in July 2012, merged into NJOY, Inc.

8 23. NJOY, Inc. is incorporated in Delaware, and has its corporate  
9 headquarters at 15211 North Kierland Boulevard, Suite 200, Scottsdale,  
10 Arizona 85254. NJOY also has an address at 5455 N Greenway Hayden # 15,  
11 Scottsdale, Arizona 85260. Upon information and belief, NJOY merged with its  
12 parent, Defendant Sottera, in July 2012.

13 24. Plaintiffs allege, on information and belief, that at all times herein,  
14 Defendant's agents, employees, representatives, executives, directors, partners,  
15 and/or subsidiaries were acting within the course and scope of such agency,  
16 employment, and representation, on behalf of Defendant.

17 **FACTUAL ALLEGATIONS**

18 **I. ELECTRONIC CIGARETTES**

19 25. This action concerns NJOY E-Cigarettes and related paraphernalia sold  
20 by Defendant, including but not limited to those marketed under the names NJOY,  
21 NJOY Kings, and OneJoy.

22 26. An electronic cigarette, or e-cigarette, is a device that simulates tobacco  
23 smoking. E-cigarettes are designed to deliver a smoking-like "hit" of vapor, usually  
24 containing nicotine, which is inhaled by the user. They work through the use of a  
25 battery operated heating mechanism, which typically converts a cartridge containing  
26 glycerin, glycol, natural and artificial flavors and, in most electronic cigarettes,  
27 various proportions of nicotine, into vapor. When a person inhales ("vapes") from  
28

1 an e-cigarette, this mimics the taking of a “drag” on a traditional tobacco cigarette.  
2 A heating device is activated, the solution is converted into vapor, and the consumer  
3 breathes it in. Many electronic cigarettes, including those manufactured by  
4 Defendant, are designed to look like tobacco cigarettes. The cylinder containing the  
5 components is the size and shape of a traditional cigarette; it is encased in a material  
6 resembling white paper printed to look like a traditional cigarette wrapper, and  
7 glows red at the tip when the user inhales.

8 27. According to a 2011 study by the Centers for Disease Control and  
9 Prevention (“CDC”), as of that year, more than one fifth of smokers in the United  
10 States had tried electronic cigarettes, and 6% of all adults had tried them.<sup>3</sup>

11 28. According to a subsequent study by the CDC, nearly 1.8 million middle  
12 and high school students tried e-cigarettes in 2011 and 2012, including  
13 approximately 160,000 students who had never used conventional cigarettes.<sup>4</sup> The  
14 study also found that the number of U.S. middle and high school student e-smokers  
15 doubled between 2011 and 2012.<sup>5</sup>

16 29. According to analysts, sales of e-cigarettes in America in 2012 were  
17 between \$300 million and \$500 million.<sup>6</sup> This was approximately double what they  
18

---

19 <sup>3</sup> Press Release, Centers for Disease Control and Prevention, *About one in five*  
20 *U.S. adult smokers have tried an electronic cigarette* (Feb. 28, 2013),  
21 [http://www.cdc.gov/media/releases/2013/p0228\\_electronic\\_cigarettes.html](http://www.cdc.gov/media/releases/2013/p0228_electronic_cigarettes.html) (last  
22 visited Jan. 7, 2014).

23 <sup>4</sup> Morbidity and Mortality Weekly Report, Centers for Disease Control and  
24 Prevention, *Notes from the Field: Electronic Cigarette Use Among Middle and High*  
25 *School Students — United States, 2011–2012* (Sept. 6, 2013),  
<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm> (last visited Jan. 7,  
2014).

26 <sup>5</sup> *Id.*

27 <sup>6</sup> *See E-cigarettes: Vape ‘Em if You Got ‘Em*, *The Economist*, Mar. 23, 2013.

1 were in the preceding year,<sup>7</sup> and sales have more than doubled to \$1.5 billion in  
2 2013.<sup>8</sup>

3 30. Defendant sells what is reportedly “America’s top-selling brand of e-  
4 cigarettes.”<sup>9</sup> On Defendant’s website, it stated that it makes “America’s #1 E-  
5 Cigarette,” and claimed, “Over 3 Million Sold.”<sup>10</sup> NJOY controls about 40 percent  
6 of the U.S. electronic cigarette market, according to its Chief Executive Officer  
7 (“CEO”), Craig Weiss.<sup>11</sup>

8 31. NJOY E-Cigarettes (including related paraphernalia) sell for a range of  
9 prices. According to a press release by Defendant dated December 6, 2012,  
10 announcing the nationwide availability of NJOY Kings, the product was introduced  
11 with a retail price of \$7.99. Individual NJOY Kings are now being sold on NJOY’s  
12 website for \$8.99. As of the filing of this Complaint, individual NJOY Kings can  
13 also be purchased at stores including various stores in California, Florida and New  
14 York, such as Walgreens in Los Angeles, California, 7-Eleven in Costa Mesa,  
15 California, 7-Eleven in Huntington Beach, California, Kangaroo Express in  
16 Jacksonville, Florida and 7-Eleven in West Babylon, New York. On its website,  
17 Defendant offers additional NJOY products at various rates including a pack of two  
18 disposable OneJoy E-Cigarettes for \$21.99, a five pack of disposable NJOY Kings  
19 for \$29.95 and a twenty pack of disposable NJOY Kings for \$104.99. Replacement  
20 cartridges for rechargeable NJOYs are also offered on NJOY’s website, with a pack

---

21 <sup>7</sup> *Id.*

22 <sup>8</sup> Horizon Investments, *E-Cigarettes: Proposed Regulations Could Prove To Be*  
23 *A Game Changer*, Seeking Alpha, May 25, 2014.

24 <sup>9</sup> See NJOY, <http://www.njoy.com/how-it-works> (last visited Jan. 7, 2014).

25 <sup>10</sup> *Id.*

26 <sup>11</sup> Burritt, Chris, *E-Cigarette Maker NJOY Seen as Takeover Target Amid Innovation*,  
27 Bloomberg, Dec 5, 2012, <http://www.bloomberg.com/news/2012-12-05/e-cigarette-maker-njoy-seen-as-takeover-target-amid-innovation.html> (last visited Jan. 7, 2014).

1 of five cartridge refills being sold for \$21.99. On information and belief, in the  
2 early portion of the relevant period, Defendant offered a slightly different array of  
3 products – NJOY Kings, for example, were first marketed under that label in  
4 December 2012 – and certain products offered by Defendant in prior years, such as  
5 starter kits, chargers and batteries for its rechargeable product line, were more  
6 expensive than many of the NJOY products offered now.

7 32. NJOY’s products are more expensive than those of certain of its  
8 competitors. For example, White Cloud, a competitor, offers individual disposables  
9 for \$5.95, and a five pack of rechargeables for \$9.95. Another competitor, Metro  
10 Kings E-Cigs, offers individual disposables for \$5.99. v2 Cigs, another leading  
11 electronic cigarette manufacturer, offers on its website a three pack of disposable e-  
12 cigarettes for \$15.95, a five pack for \$29.95, and a ten pack for \$54.95, as well as a  
13 five pack of rechargeables for \$9.95. Yet another competitor, Mystic, sells one  
14 disposable electronic cigarette for \$5.99, a starter kit for its rechargeable electronic  
15 cigarettes that includes two cartridges, one battery, and one USB charger, and refills  
16 for 3 five packs for \$29.99 and 12 five packs for \$129.99; and a five pack of  
17 cartridges for its rechargeable e-cigarettes for \$14.99. Krave offers individual  
18 disposable Krave King e-cigarettes for \$6.95 and a five pack of cartridges for its  
19 rechargeable e-cigarettes for \$10.95. Bull Smoke offers individual disposable  
20 “Buckshot” e-cigarettes for \$5.00 each, and a five pack of cartridges for its  
21 rechargeable e-cigarettes for \$12.99.

22 33. On information and belief, most members of the proposed Classes have  
23 bought more than one of Defendant’s NJOY products.

## 24 **II. PUBLISHED STUDIES DEMONSTRATE THE DANGERS AND** 25 **EXPOSURE TO HEALTH RISKS OF E-CIGARETTES**

26 34. Because of the rapid growth in the use of electronic cigarettes by  
27 consumers in recent years, an increasing number of government agencies and  
28

1 research facilities have begun to conduct studies concerning the potential health  
 2 impact and risks of these devices. These studies have found, *inter alia*, including  
 3 with respect to NJOY E-Cigarettes: (a) measurable amounts of carcinogens, toxins  
 4 and other contaminants in e-cigarettes that are, or potentially are, disease-causing,  
 5 (b) harmful potential side effects of e-cigarettes, and (c) that more study is needed to  
 6 determine the full range of health dangers of e-cigarettes.

7 35. In 2009, the United States Food and Drug Administration (“FDA”)  
 8 conducted a study of two brands of cigarettes, one of which was NJOY.<sup>12</sup> The FDA  
 9 tested a number of NJOY products, including menthol and regular samples at a  
 10 variety of nicotine strengths.

11 36. The FDA issued a summary of the results of that study,<sup>13</sup> making, *inter*  
 12 *alia*, the statements in the following block quotes (language in brackets added):

- 13 • [the] FDA’s Center for Drug Evaluation, Office of Compliance  
 14 purchased two samples of electronic cigarettes and components from  
 15 two leading brands. [These were: NJOY E-Cigarettes with various  
 16 cartridges and Smoking Everywhere Electronic Cigarettes with  
 17 various cartridges.<sup>14</sup>] These samples included 18 of the various  
 18 flavored, nicotine, and no-nicotine cartridges offered for use with  
 19 these products. These cartridges were obtained in order to test some  
 20 of the ingredients contained in them and inhaled by users of electronic

21 <sup>12</sup> See FDA Evaluation of E-cigarettes, DPATR-FY-09-23, available at  
 22 <http://www.fda.gov/downloads/drugs/scienceresearch/ucm173250.pdf> (last visited  
 23 Jan. 13, 2014).

24 <sup>13</sup> <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146> (last visited  
 25 Jan. 7, 2014).

26 <sup>14</sup> For the applicability to NJOY of this and each of the below bullet points  
 27 quoted regarding the FDA study, see FDA Evaluation of E-cigarettes, DPATR-FY-  
 28 09-23, available at <http://www.fda.gov/downloads/drugs/scienceresearch/ucm173250.pdf> (last visited Jan. 13, 2014).

1 cigarettes.

- 2 • FDA's Center for Drug Evaluation, Division of Pharmaceutical  
3 Analysis (DPA) analyzed the cartridges [including NJOY cartridges]  
4 from these electronic cigarettes for nicotine content and for the  
5 presence of other tobacco constituents, some of which are known to  
6 be harmful to humans, including those that are potentially  
7 carcinogenic or mutagenic.
- 8 • DPA's analysis of the electronic cigarette samples [including those  
9 from NJOY] *showed that the product contained detectable levels of*  
10 *known carcinogens and toxic chemicals to which users could*  
11 *potentially be exposed.* [Emphasis added.]
- 12 • DPA's testing also suggested that *quality control processes used to*  
13 *manufacture these products are inconsistent or non-existent.*  
14 [Emphasis added.]
- 15 • Specifically, DPA's analysis of the electronic cigarette cartridges  
16 from the two leading brands revealed the following:
- 17 • *Certain tobacco-specific nitrosamines which are human*  
18 *carcinogens were detected in half of the samples tested*  
19 *[including NJOY samples].*
- 20 • *Tobacco-specific impurities suspected of being harmful to*  
21 *humans—anabasine, myosmine, and  $\beta$ -nicotyrine—were*  
22 *detected in a majority of the samples tested [including*  
23 *NJOY samples].*
- 24 • Three different [NJOY] electronic cigarette cartridges with  
25 the same label ["Menthol high"] were tested and each  
26 cartridge emitted a markedly different amount of nicotine  
27 with each puff. The nicotine levels per puff ranged from  
28

26.8 to 43.2 mcg nicotine/100 mL puff.

*Id.* (Emphasis added.)

37. The FDA issued a contemporaneous consumer health brochure titled, “FDA Warns of Health Risks Posed by E-Cigarettes,”<sup>15</sup> in which Margaret A. Hamburg, M.D., commissioner of food and drugs, stated, “The FDA is concerned about the safety of these products and how they are marketed to the public.” The FDA also issued a safety alert<sup>16</sup> repeating the risks and noting that “[t]hese products do not contain any health warnings comparable to FDA-approved nicotine replacement products or conventional cigarettes.”

38. Indeed, in the FDA’s 2009 study, all four of the major tobacco-specific nitrosamines, N-nitrosonicotine (NNN), N-nitrosoanabasine (NAB), N-nitrosoanatabine (NAT) and 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanone (NNK), were found in NJOY cartridges.

39. The health risks and unknowns concerning electronic cigarettes are compounded by the reality that e-cigarette users smoke differently than traditional smokers. For example, a study of eight traditional and four electronic cigarettes including certain NJOY products found, *inter alia*, that, for the NJOYs, they “required a stronger vacuum [inhalation strength] to smoke than conventional [tobacco] brands.” Trtchounian, A., *Conventional and Electronic cigarettes (e-cigarettes) have different smoking characteristics*, Nic. & Tob. Res., Vol. 12, No. 9 (Sept. 2010), at 911.<sup>17</sup> (Emphasis added.) The study states, “the effects of this on human health could be adverse.” *Id.* at 905. According to researchers, as a general

<sup>15</sup> Retrieval at <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm173401.htm> (last visited Jan. 7, 2014).

<sup>16</sup> Retrieval at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm> (last visited Jan. 7, 2014).

<sup>17</sup> Retrieval at <http://edge.rit.edu/content/P12056/public/e%20cig%20vs%20conventional%20cig.pdf> (last visited Jan. 14, 2014).



1 matter, stronger puffing has the potential for “leading to cancer in the deeper lung  
2 regions.” *Lung Deposition Analyses of Inhaled Toxic Aerosols in Conventional and*  
3 *Less Harmful Cigarette Smoke: A Review*, International Journal of Environmental  
4 Research and Public Health, September 23, 2013.<sup>18</sup>

5 40. Since the FDA released the results of its 2009 study of NJOY and  
6 Smoking Everywhere Electronic Cigarettes and its concomitant warning concerning  
7 e-cigarettes generally, new studies have been emerging discussing the risks and  
8 dangers of e-cigarettes. These studies have concerned a variety of brands and  
9 products, but, because e-cigarettes generally operate in a similar manner, and  
10 contain similar primary ingredients, even those studies which are not identified  
11 below as directly having reviewed NJOY products are relevant hereto.

12 41. E-cigarettes are a subject of concern to major international entities.  
13 According to a presentation given by the World Health Organization (“WHO”) to  
14 the European Parliament at a Workshop on Electronic Cigarettes on May 7, 2013,  
15 “electronic cigarettes are a controversial issue for which additional studies and  
16 evidence are needed.” That presentation referenced recent findings from Turkey  
17 that:

18 *indicate that propylene glycol and tobacco specific N-nitrosamines, a*  
19 *powerful carcinogen, were found in the majority of samples.* Toxins  
20 from the e-cigarette averaged around 20% of those of a regular cigarette.  
21 It was also found that similarly labeled ENDS [Electronic Nicotine  
22 Delivery Systems] cartridges emit different amounts of nicotine, and a  
23 nicotine overdose may occur which can have serious side effects. *There*  
24 *are currently no studies available on safety and efficacy of long-term e-*  
25 *cigarettes use.*

26 <sup>18</sup> Retrieval at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3799535/> (last  
27 visited Jan. 14, 2014).

42. As recently as July 2013, the WHO stated that “[m]ost ENDS [Electronic Nicotine Delivery Systems] contain large concentrations of propylene glycol, which is a known irritant when inhaled,” that “[t]he testing of some of these products also suggests the presence of other toxic chemicals, aside from nicotine,” and that the safety of these devices “has not been scientifically demonstrated.”<sup>19</sup>

43. Numerous other studies have been performed by universities and other research centers, and have reported similar concerns about the potential for health risks associated with electronic cigarettes.

44. For example, a 2013 report titled *Electronic Cigarettes – an Overview*, by the German Cancer Research Center,<sup>20</sup> which was based on a comprehensive review of literature in the field, found in summary as to “Product characteristics” (the following bullet pointed paragraphs are block quoted text):

- E-cigarettes cannot be rated as safe at the present time.
- Consumers do not have reliable information on product quality.
- Electronic cigarettes have various technical flaws (leaking cartridges, accidental intake of nicotine when replacing cartridges, possibility of unintended overdose.)
- Some manufacturers provide insufficient and partly wrong information about their liquids.

As to “Health Effects,” the summary stated (the following bullet pointed paragraphs are block quoted text):

- The liquids contain ingredients that on short-term use irritate airways and may lead to allergic reactions and which may be harmful

<sup>19</sup> Retrievable at [http://www.who.int/tobacco/communications/statements/electronic\\_cigarettes/en/](http://www.who.int/tobacco/communications/statements/electronic_cigarettes/en/) (last visited Jan. 7, 2014).

<sup>20</sup> Published in Red Series, Tobacco Prevention and Tobacco Control, Vol. 19: Electronic Cigarettes – An Overview (Heidelberg 2013), available at <http://www.dkfz.de/en/presse/download/RS-Vol.19-E-Cigarettes-EN/pdf>.

1 to health when inhaled repeatedly over a prolonged period of time.

- 2 • The aerosol of some liquids contains harmful substances  
3 (formaldehyde, acetaldehyde, acrolein, diethylene glycol, nickel,  
4 chromium, lead).
- 5 • The functionality of electronic cigarettes can vary considerably  
6 (aerosol production, nicotine delivery into aerosols).
- 7 • Adverse health effects for third parties exposed cannot be excluded  
8 because the use of electronic cigarettes leads to emission of fine and  
9 ultrafine inhalable liquid particles, nicotine and cancer-causing  
10 substances into indoor air.

11 *Id.* at viii.

12 45. Among the more specific risks identified in the studies reviewed in that  
13 report by the German Cancer Research Center are that, *inter alia* (the following  
14 bullet pointed paragraphs are block quoted text, the language in brackets has been  
15 added, and all internal citations are omitted):

- 16 • Electronic cigarettes do not extinguish naturally after about ten  
17 puffs like conventional cigarettes, but can be used for hundreds of  
18 puffs without a break. When using them as intended, consumers  
19 may therefore get a dangerous amount of nicotine by taking too  
20 many puffs, which may even result in serious symptoms of nicotine  
21 poisoning. *Id.* at 4-5.
- 22 • Not even nicotine-free liquids are necessarily harmless. Their main  
23 ingredients (propylene glycol [which is an ingredient in NJOY],  
24 glycerine [another ingredient in NJOY], flavours) have been  
25 approved for use in food, but this does not necessarily mean that  
26 they are also safe when they are repeatedly inhaled over a prolonged  
27 period of time – as they are when used in electronic cigarettes.

1           There are currently no studies available on the effects of long-term  
2           use of e-cigarettes. *Id.* at 7.

- 3           • To date, only [a] few studies have been conducted on potential  
4           health risks associated with inhaling propylene glycol [an ingredient  
5           in NJOY] – as one does when using electronic cigarettes as  
6           intended. According to these studies, inhaling propylene glycol  
7           may affect airways. Short-term exposure to propylene glycol in  
8           indoor air (309 mg/m<sup>3</sup> for one minute) already causes irritations in  
9           the eyes, throat and airways. Long-term exposure to propylene  
10          glycol in indoor air may raise children’s risk of developing asthma.  
11          People who have frequently been exposed to theatrical fogs  
12          containing propylene glycol are more likely to suffer from  
13          respiratory, throat and nose irritations than do unexposed people.  
14          We may therefore assume that the use of e-cigarettes, which  
15          involves inhaling propylene glycol vapours several times daily, may  
16          cause respiratory irritations. This applies, in particular, to  
17          individuals with impaired airways and to smokers who switch to e-  
18          cigarettes or use them additionally, because smokers usually already  
19          have impaired airways. *Id.*

- 20          • Glycerine [an ingredient in NJOY] is considered generally safe for  
21          oral intake and is used in food production as a humectant and as a  
22          solution carrier in flavours. However, this does not necessarily  
23          mean that it is also safe for inhalation – as in e-cigarettes if used as  
24          intended. These concerns are not unfounded. The specialist journal  
25          Chest reports about a case study of a patient with lipoid pneumonia  
26          caused by glycerine-based oils from the aerosol of electronic  
27          cigarettes. The link appears to be clear, since symptoms  
28

1 disappeared when the patient stopped using electronic cigarettes.  
2 *Id.* at 7-8.

- 3 • Individual liquids [including NJOY, per the FDA study noted above  
4 and cited in the instant article] were found to contain small amounts  
5 of nitrosamines. In addition, formaldehyde, acetaldehyde and  
6 acrolein were measured in the aerosol of various e-cigarettes,  
7 although considerably less than in cigarette smoke. Formaldehyde  
8 and acrolein were only found in glycerine-containing liquids [NJOY  
9 contains glycerine]; they probably form upon heating of glycerine.  
10 Acrolein is absorbed by the user: A decomposition product of  
11 acrolein was detected in the urine of e-cigarettes users, although  
12 considerably less than after smoking conventional cigarettes. In  
13 addition, nickel and chromium were detected in the aerosol, with  
14 higher levels of nickel measured than it is known to be present in  
15 cigarette smoke. The aforementioned substances have been  
16 classified by the German Research Foundation (Deutsche  
17 Forschungsge- meinschaft, DFG) and the International Agency for  
18 Research on Cancer (IARC) as carcinogenic. Since there is no safe  
19 threshold value for these substances, it cannot be excluded that  
20 using electronic cigarettes increases cancer risk, even though these  
21 substances may be present in very small amounts. *Id.*
- 22 • Data on the impact of e-cigarette use on pulmonary function are not  
23 conclusive. A study involving 30 participants reports adverse  
24 effects on pulmonary function after using an electronic cigarette for  
25 five minutes; however, the long-term pulmonary effects of e-  
26 cigarette use are unknown at the present time. *Id.*
- 27 • There are currently no studies available on the effects of long-term  
28

1 use of e-cigarettes. *Id.* at 7.

2 46. Certain of the many studies considered in the above referenced Red  
3 Series review are among those discussed in more detail in the individual study  
4 references below. One such study was *Short-term Pulmonary Effects of Using an*  
5 *Electronic Cigarette*, published in June 2012 in *Chest*, the journal of the American  
6 College of Chest Physicians. That study expressly found both that electronic  
7 cigarettes had adverse health effects and the need for further research:

8 *E-cigarettes assessed in the context of this study were found to have*  
9 *immediate adverse physiologic effects after short-term use that are*  
10 *similar to some of the effects seen with tobacco smoking*; however, the  
11 long-term health effects of e-cigarette use are unknown but potentially  
12 adverse and worthy of further investigation. [Emphasis added.]

13 47. A French article published in the consumer publication *60 millions de*  
14 *consommateurs* on August 26, 2013, reported that e-cigarettes are potentially  
15 carcinogenic. It based its findings upon testing 10 different models of e-cigarettes.<sup>21</sup>  
16 It found “carcinogenic molecules in a significant amount” in the vapour produced in  
17 the products. It further determined that “[i]n three cases out of 10, for products with  
18 or without nicotine, the content of formaldehyde was as much as the levels found in  
19 some conventional cigarettes.” It found acrolein, a toxic molecule emitted in  
20 quantities “that exceeded the amount found in the smoke of some cigarettes.”  
21 “Potentially toxic” trace metals were also discovered in some of the models.

22 48. A study by scientists at the University of California Riverside,  
23 published on March 20, 2013 in the journal *PLoS One*, found that:

24 one [unidentified] brand of e-cigarettes generates aerosols containing

25  
26 <sup>21</sup> Quotes in this paragraph are derived from B. McPartland, “Report: e-  
27 cigarettes are ‘potentially carcinogenic’” an article published in *The Local*, a source  
28 for “France’s News in English,” on August 26, 2013, describing this study.

1 micron particles comprised of tin, silver, iron, nickel, aluminum and  
2 silicate, as well as nanoparticles containing tin, chromium and nickel,  
3 which are elements that cause respiratory distress and disease. Those  
4 metals come from the wires inside the cartridge, while silicate particles  
5 may originate from the fiber glass [*sic*] wicks.

6 Williams, M., *et al.*, *Metal and Silicate Particles Including Nanoparticles Are*  
7 *Present in Electronic Cigarette Cartomizer Fluid and Aerosol*, PLoS ONE 8(3):  
8 e57987 (2013).

9 49. Also, according to that study by the University of California at  
10 Riverside:

11 A total of 22 elements were identified in EC [electronic cigarette]  
12 aerosol, and three of these elements (lead, nickel, and chromium)  
13 appear on the FDA's "harmful and potentially harmful chemicals" list.  
14 Lead and chromium concentrations in EC aerosols were within the  
15 range of conventional cigarettes, while nickel was about 2–100 times  
16 higher in concentration in EC aerosol than in Marlboro brand cigarettes  
17 (Table 1). Adverse health effects in the respiratory and nervous  
18 systems can be produced by many of the elements in Table 1, and many  
19 of the respiratory and ocular symptoms caused by these elements have  
20 been reported by EC users in the Health and Safety Forum on the  
21 Electronic Cigarette Forum website ([http://www.e-cigarette-](http://www.e-cigarette-forum.com/forum/health-safety-e-smoking/)  
22 [forum.com/forum/health-safety-e-smoking/](http://www.e-cigarette-forum.com/forum/health-safety-e-smoking/)). Although [a table  
23 reflecting this research] was constructed to emphasize the effects of the  
24 elements found in aerosol on the respiratory system, other systems,  
25 such as the cardiovascular and reproductive systems, can be affected by  
26 most of the elements in EC aerosol. *EC consumers should be aware*  
27 *of the metal and silicate particles in EC aerosol and the potential*  
28



1 *health risks associated with their inhalation.*

2 *Id.* at 5 (emphasis added).

3 50. A study published on September 23, 2013 in the International Journal  
4 of Environmental Research and Public Health titled, *Lung Deposition Analyses of*  
5 *Inhaled Toxic Aerosols in Conventional and Less Harmful Cigarette Smoke: A*  
6 *Review*, found that there were potential risks associated with e-cigarettes that were  
7 not a factor in traditional cigarettes, including “compensatory smoking (*i.e.*, stronger  
8 puffing) leading to cancer in the deeper lung regions,” and that “[u]nknown  
9 reactions between some components in newly designed filters (or other new  
10 additives) may lead to the production of carcinogens or other toxicants.”

11 51. Most NJOY E-Cigarettes contain nicotine. On December 15, 2013, the  
12 American Society for Cell Biology issued a press release concerning the findings of  
13 researchers at Brown University, who determined that, “Nicotine, the major  
14 addictive substance in cigarette smoke, contributes to smokers’ higher risk of  
15 developing atherosclerosis, the primary cause of heart attacks,” and that, as such, e-  
16 cigarettes, which contain nicotine, as most NJOY E-Cigarettes do, “may not  
17 significantly reduce risk for heart disease.”<sup>22</sup>

18 **III. DEFENDANT’S ADVERTISEMENTS FOR ITS NJOY**  
19 **E-CIGARETTES ARE MATERIALLY DECEPTIVE, FALSE**  
20 **AND MISLEADING**

21 52. Defendant has carried out a consistent and widespread campaign of  
22 deceptively promoting its NJOY E-Cigarettes. The core marketing message that  
23

---

24 <sup>22</sup> American Society for Cell Biology, “Nicotine drives cell invasion that  
25 contributes to plaque formation in coronary arteries, Research indicates e-cigarettes  
26 may not significantly reduce risk for heart disease,” Dec. 15, 2013, available at  
27 [http://www.eurekalert.org/pub\\_releases/2013-12/asfc-ndc112613.php](http://www.eurekalert.org/pub_releases/2013-12/asfc-ndc112613.php) (last accessed  
28 Jan. 7, 2014).

Defendant has used, that its products provide “*everything you like about smoking without the things you don’t*” (emphasis added), and other statements that also convey the message that the use of NJOY E-Cigarettes is known to be safer than smoking traditional cigarettes, or known to be generally safe, are false and misleading given the studies discussed above that have found carcinogens, toxins, and other potentially harmful impurities, including certain of those found in traditional tobacco cigarettes, in electronic cigarettes, including NJOY E-Cigarettes. It is also false and misleading given the content of the NJOY products because there is still insufficient research for NJOY to assert or convey that NJOY products do not pose long term health dangers as smoking traditional cigarettes does. Defendant’s statements and omissions have occurred in at least four forms, all of which constitute “advertising.” These include: its packaging; inserts to its packaging and shipping materials; its print advertisements; and its website through which it directly sells its NJOY E-Cigarettes and related products to the public. Defendant’s pervasive advertising message conveys the impression that, unlike traditional tobacco cigarettes, which contain carcinogens, toxins and other impurities and cause disease (i.e., “the things you don’t” like about cigarettes), NJOY E-Cigarettes are “without” those things and do not carry that same risk of disease. As demonstrated above in Section II, however, this is materially deceptive, false and misleading given the information revealed by studies that not only are e-cigarettes such as NJOY E-Cigarettes potentially dangerous to your health but that they also may carry many of the same risks of disease as traditional tobacco cigarettes, including as a result of the tobacco specific nitrosamines they contain that are powerful carcinogens, which is not disclosed by Defendant.

53. Beginning in 2007, as shown below, NJOY packaging bore the slogan “ALL THE PLEASURES OF SMOKING WITHOUT ALL THE PROBLEMS”<sup>23</sup>:

---

<sup>23</sup> [http://tobaccoproducts.org/index.php/NJoy\\_Electronic\\_Cigarette](http://tobaccoproducts.org/index.php/NJoy_Electronic_Cigarette) (last visited (continued...))



54. NJOY's pattern of deceptive marketing is pervasive, including the use of its "everything you like about smoking without the things you don't" slogan (or the like) in its advertisements, and other false, misleading and deceptive statements, as discussed herein.

55. The packages for NJOY's current main product, NJOY Kings, introduced to the market in December 2012, are designed to look like they contain traditional cigarettes, and the NJOY Kings smoking devices mirror traditional cigarettes and, as such, are intended to capitalize on consumers' desire to smoke but yet avoid the health dangers of traditional tobacco cigarettes. For example, as described more fully below, one of NJOY's commonly used taglines includes the statements: "Finally, smokers have a real alternative," and "Cigarettes, you've met your match."

---

(...continued)

12/14/13) (showing picture of packaging with tagline, dated 2007, and stating that each product was introduced in 2007).

56. The packaging for NJOY products, through warnings that are fraught with material omissions, conveys the impression that the product contains no meaningful health risks other than possibly those that are a direct result of nicotine. For example, the packaging on NJOY Kings warns:<sup>24</sup>



On information and belief, OneJoys contain the same or substantively similar warnings.

57. The small print on the back of the packaging is significant not only because its font is so small as to be difficult for many people to read, but also for its failure to list the ingredients of the product. While Defendant does describe what it claims are its ingredients on its website (which description is itself false and misleading as described below), by omitting the ingredients from the labels, Defendant denies consumers at the point of sale the opportunity to decide for themselves whether the chemicals used are substances they are willing to risk

<sup>24</sup> Photographs taken November 21, 2013 of product purchased on that date.

1 inhaling. For example, by omitting the ingredients, Defendant hides the fact that  
 2 NJOY E-Cigarettes contain propylene glycol, a product found to cause throat  
 3 irritation and induce coughing,<sup>25</sup> and thus no longer used by certain of NJOY's  
 4 competitors in their e-cigarettes. Moreover, as discussed below, omitting the  
 5 ingredients on the package conceals the dangers associated with the chemicals in its  
 6 NJOY E-Cigarettes, which are described in the studies referenced above.

7 58. The text on the back of the NJOY King and OneJoy packages reads:  
 8 WARNING: NJOY products are not smoking cessation products and  
 9 have not been tested as such. The U.S. FDA has not approved NJOY  
 10 products for any use and they are not intended to diagnose, cure,  
 11 mitigate, treat, or prevent any disorder, disease, or physical or mental  
 12 condition. NJOY products contain nicotine, a chemical known to the  
 13 State of California to cause birth defects or other reproductive harm.  
 14 Nicotine is addictive and habit forming, and it is very toxic by  
 15 inhalation, in contact with the skin, or if swallowed. Ingestion of the  
 16 non-vaporized concentrated ingredients in the cartridges can be  
 17 poisonous. Physical effects of nicotine may include accelerated heart  
 18

---

19 <sup>25</sup> *Electronic Cigarettes – An Overview*, published in the Red Series Tobacco  
 20 Prevention and Tobacco Control, Vol. 19 (Heidelberg 2013), referenced in ¶¶ 44-45  
 21 above, citing Wieslander G., *Experimental exposure to propylene glycol mist in*  
 22 *aviation emergency training: acute ocular and respiratory effects*, Occup Environ  
 23 Med 58: 649-655, Choi H, (2010), *Common household chemicals and the allergy*  
 24 *risks in pre-school age children*, PLoS One 5: e13423, and Moline JM, *Health*  
 25 *effects evaluation of theatrical smoke, haze and pyrotechnics* (2000). See also New  
 26 Hampshire Department of Environmental Services, *Ethylene Glycol and Propylene*  
 27 *Glycol: Health Information Summary*, Environmental Fact Sheet,  
 28 <http://des.nh.gov/organization/commissioner/pip/factsheets/ard/documents/ard-ehp-12.pdf> (last visited Jan. 7, 2014) (stating that “Human volunteers exposed to high levels of propylene glycol mist for a short time had increased levels of eye and throat irritation, and cough.”).

1 rate and increased blood pressure. If the cartridge is swallowed, seek  
2 medical assistance immediately. NJOY products are intended for use  
3 by adults of legal smoking age (18 or older in California), and not by  
4 children, women who are pregnant or breastfeeding, or persons with or  
5 at risk of heart disease, high blood pressure, diabetes, or taking  
6 medicine for depression or asthma. NJOY products may not be sold to  
7 minors. Identification of all persons under 26 will be required before  
8 purchase. Keep out of reach of children.

9 59. By warning of risks relating to nicotine, and the risks that may arise if  
10 the concentrated contents of the cartridge are swallowed without being vaporized,  
11 this packaging implies that those are the only health-related risks that relate to  
12 NJOY E-Cigarettes. This is deceptive and misleading, as the package omits  
13 reference to the other carcinogens, toxins and impurities, including carcinogenic  
14 tobacco-specific nitrosamines found in NJOY E-Cigarettes as discussed above in  
15 Section II. It also does not reference the difference in inhalation behavior between  
16 vaping and traditional smoking (described herein) that may cause additional  
17 problems for persons who use e-cigarettes, including NJOY E-Cigarettes.  
18 Moreover, by listing health risks related to nicotine, but not cancer, the packaging is  
19 further misleading by omission.

20 60. As demonstrated below, Defendant's pervasive advertisements  
21 representing that NJOY E-Cigarettes offer all of the positive aspects of smoking/  
22 cigarettes without the negative ones, and otherwise implying that NJOY E-  
23 Cigarettes are without various health risks, are materially deceptive, false and  
24 misleading given the studies discussed above in Section II and fail to disclose that  
25 such research and studies have raised significant concerns about the health risks of  
26 NJOY E-Cigarettes, including but not limited to:



- the presence of nitrosamines, toxins, and other impurities, including certain of those found in tobacco cigarettes, that are dangerous to the user's health and cause disease;
- the harmful impact to lung capacity as a result of the chemicals, including propylene glycol, contained therein that are present in NJOY E-Cigarettes;
- that NJOY E-Cigarettes require that the user take significantly stronger puffs than the puffs required for a traditional tobacco cigarette, and that this could be harmful to health;
- and other potentially dangerous but unknown health effects caused by the long term use of e-cigarettes, including NJOY E-Cigarettes.

61. For example, one package insert for NJOY E-Cigarettes is as follows:



62. The statements in the insert above, including that “The NJOY King provides everything you like about smoking without the things you don’t,” are deceptive, false and misleading for the reasons stated in ¶ 60, *supra*.



63. Another insert found in NJOY's packaging in 2013 instructs readers, "Be sure to tell your friends and family about the positive impact that NJOY products are having on your life," and states that "the NJOY King gives you everything you love about the smoking experience":



64. For the reasons noted above in ¶ 60, these representations are deceptive, false and misleading.

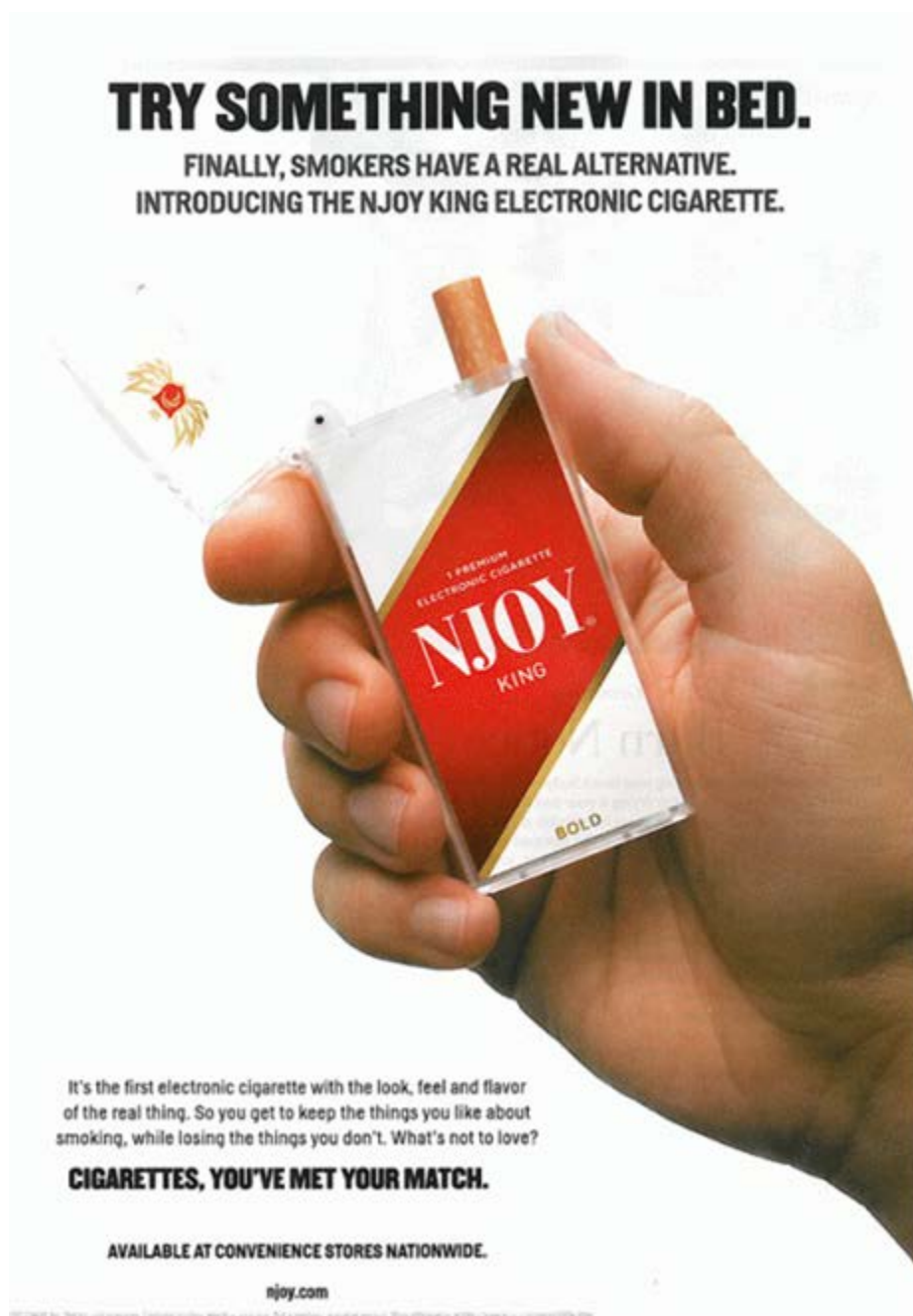
65. As shown in the picture below, in one 2013 ad, NJOY states, under the lead line, "The most amazing thing about this cigarette? It isn't one," that with the NJOY King, "You get to keep all the things you like about smoking while losing the things you don't."<sup>26</sup>

<sup>26</sup> Published in, at least, Out Magazine, February 2013.



66. Another ad shown below, under the lead line, “Try something new in bed. Finally smokers have a real alternative,” asserts “It’s the first electronic

cigarette where you get to keep the things you like about smoking, while losing the things you don't. What's not to love? Cigarettes, you've met your match."<sup>27</sup>



<sup>27</sup> Published in, at least, Out Magazine, June 2013.

67. Another ad, shown below, contains the same text, but under the lead line, “Start a new relationship,” says, “you get to keep the things you like about cigarettes while losing the things you don’t. What’s not to love?”<sup>28</sup>



<sup>28</sup> Publis



1  
2  
3  
4 68. The statements in the advertisements in ¶¶ 65-67 above, including that  
5 with NJOY E-Cigarettes, “You get to keep all the things you like about smoking  
6 while losing the things you don’t,” are deceptive, false and misleading for the  
7 reasons stated in ¶ 60, *supra*.

8 69. In addition, advertising like the one shown below<sup>29</sup> gives the  
9 impression that NJOY E-Cigarettes are a smoking cessation device:



27 <sup>29</sup> Published in, at least, Rolling Stone, January 17, 2013.  
28

1  
2       70. The phrase “Resolution Solution” clearly refers to smokers’ New Years  
3 resolutions to quit smoking. This conveys the impression that NJOY E-Cigarettes  
4 are, in fact, a smoking cessation aid. Yet, in multiple places, including as referred to  
5 in ¶ 58, *supra* (but omitted in this particular advertisement), Defendant states that  
6 NJOY E-Cigarettes are not a smoking cessation device. Thus, this advertisement is  
7 deceptive, false and misleading. This misrepresentation is particularly significant  
8 because the reason that NJOY states elsewhere that it is not a smoking cessation  
9 device is to avoid regulation under the Food, Drug and Cosmetic Act (“FDCA”)  
10 which has been found, in a lawsuit to which NJOY was a party, to grant the FDA  
11 the power to regulate smoking cessation devices. *See Smoking Everywhere, Inc. v.*  
12 *United States FDA*, 680 F. Supp. 2d 62 (D.D.C. 2010), and, upholding that decision,  
13 *Sottera, Inc. v. FDA*, 627 F.3d 891 (D.C. Cir. 2010).

14       71. In addition, NJOY’s promotion of its NJOY E-Cigarettes as a “real  
15 alternative” for smokers in its various ads continues to convey the deceptive, false  
16 and misleading impression discussed above that its NJOY E-Cigarettes are  
17 “without” the things you don’t like about traditional tobacco cigarettes and therefore  
18 carry no risk of and do not cause disease as traditional tobacco cigarettes do, which  
19 is false in light of the material information discussed in the studies *supra*, in Section  
20 II, which are not disclosed by Defendant.

21       72. Each example of NJOY’s packaging, inserts and advertising contains  
22 an address for NJOY’s website, which as described herein, also contains  
23 misrepresentations and omissions about NJOY’s products.

24       73. The following product description, stating, “It provides everything you  
25 like about smoking without the things you don’t,” was taken from Defendant’s  
26 website.<sup>30</sup>

27       <sup>30</sup> NJOY, <http://www.njoy.com/njoy-kings/njoy-king-3-pack.html> (last visited  
28 (continued...))

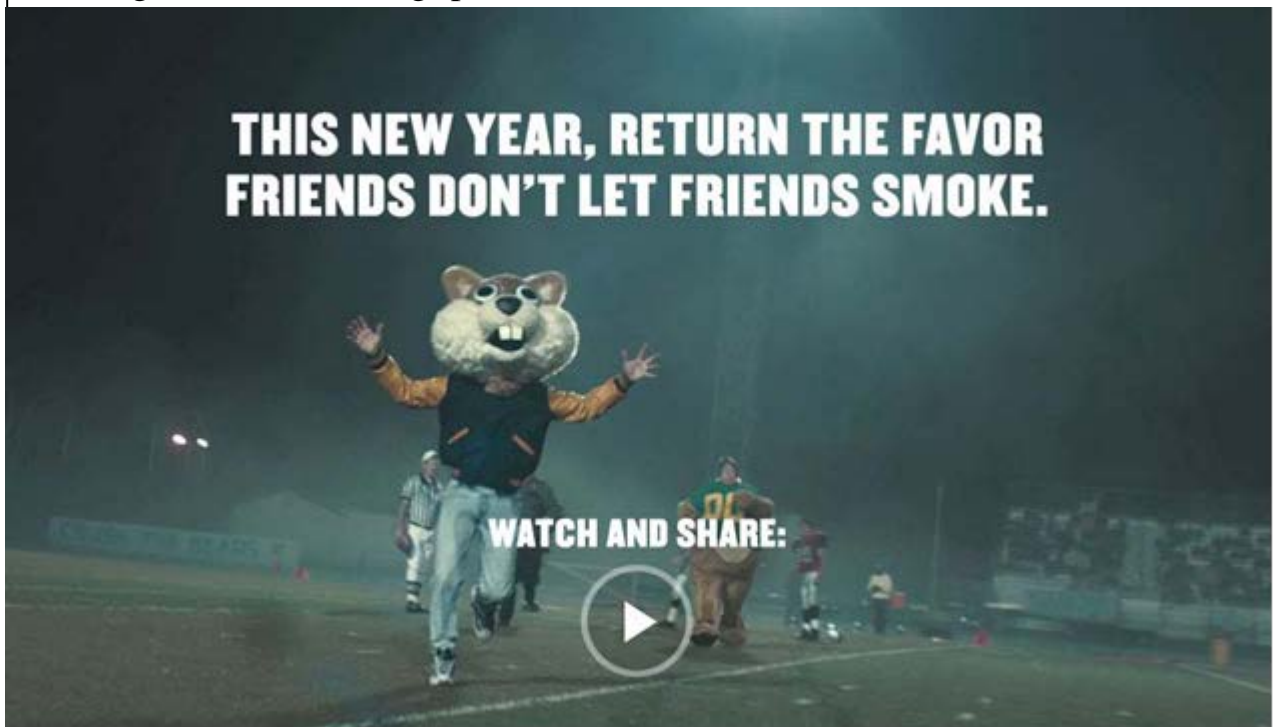
## Product Description

### What Is An NJOY King?

It's a premium electronic cigarette with the look, feel and flavor of the real thing, but without the tobacco smoke. Instead it emits a flavorful but odorless vapor. It provides everything you like about smoking without the things you don't. No tobacco smoke or cigarette smell.

74. As described above, the statement, "It provides everything you like about smoking without the things you don't," is deceptive, false and misleading for the reasons stated in ¶ 60, *supra*.

75. Beginning in approximately early January 2014, Defendant added a new slogan to its marketing (pictured below): "Friends Don't Let Friends Smoke."<sup>31</sup>



(...continued)

Jan. 10, 2013).

<sup>31</sup> According to an AdvertisingAge Article published January 2, 2014, this ad "will appear through the winter and spring on cable networks including discovery, ESPN and Viacom, as well as on the radio, in digital media and in "out-of-home" ads. <http://adage.com/article/media/njoy-e-cig-tv-spot-insists-friends-friends-smoke/290886/> (last visited June 25, 2014). The ad also appeared during the 2014 Super Bowl.



76. A reasonable consumer viewing this advertisement would believe it to mean that “friends don’t let friends smoke” because traditional tobacco cigarettes contain carcinogens and toxins and smoking carries the risk of disease, but that friends should encourage friends to use NJOY because NJOY E-Cigarettes do not contain carcinogens or toxins as tobacco cigarettes do and do not therefore carry the same or similar risk of disease. According to a January 2, 2014 article published in Advertising Age, “[a]sked whether the ad winks at the audience about health claims, a spokeswoman for NJOY said yes.”<sup>32</sup> This is another deceptive, false and misleading advertisement for the reasons stated in ¶ 60, *supra*.

77. On its website, Defendant has a Frequently Asked Questions page.<sup>33</sup> In one of the sections, Defendant stated that “[t]he primary ingredients [of NJOY E-Cigarettes] are glycerin and propylene glycol, and the secondary ingredients are nicotine and flavors to replicate the taste of traditional smoking,” and went on to provide deceptive, false and misleading statements about those ingredients.<sup>34</sup> With respect to propylene glycol and glycerin, Defendant’s FAQ page on its website stated:

- Propylene Glycol - The Food and Drug Administration (FDA) has determined propylene glycol to be “***generally recognized as safe***” for use in food, and propylene glycol is used in cosmetics and medicines. [Emphasis added.] It is used in food coloring and flavoring, as an additive to keep food, medicines and cosmetics moist, and in machines that simulate smoke, although usage in simulating smoking devices is not currently included in the list of uses recognized by the FDA. In NJOY, propylene glycol

---

<sup>32</sup> *Id.*

<sup>33</sup> NJOY, <http://www.njoy.com/faqs> (last visited Jan. 7, 2014).

<sup>34</sup> *Id.*

1 functions to provide the vapor mist that looks like smoke and to  
 2 suspend flavor. [Emphasis added.]

- 3 • Glycerin - The FDA has determined glycerin to be “***generally***  
 4 ***recognized as safe***” for use in food, and glycerin is commonly  
 5 used in foods, beverages, medical and pharmaceutical  
 6 applications, such as cough drops, although usage in simulating  
 7 smoking devices is not currently included in the list of uses  
 8 recognized by the FDA. [Emphasis added.]

9 78. By stating that the FDA considers these substances “generally  
 10 recognized as safe” for consumption in food, Defendant created the false and  
 11 misleading impression that these substances carry no risk and are safe as used for  
 12 inhalation in NJOY E-Cigarettes, as discussed above. However, the gastrointestinal  
 13 system processes foreign matter differently than the respiratory system, and  
 14 ingredients that may be safe when digested may not be safe when inhaled, especially  
 15 with long term use. The additional statement that “usage in simulating smoking  
 16 devices is not currently included in the list of uses recognized by the FDA,” is itself  
 17 misleading in the absence of reference to the studies finding that these ingredients  
 18 may not be safe when inhaled, including, but not limited to, the studies referenced in  
 19 the review of the literature, *Electronic Cigarettes – An Overview*, published in the  
 20 Red Series Tobacco Prevention and Tobacco Control, Vol. 19 (Heidelberg 2013),  
 21 referenced in ¶¶ 44-45 above. For example, that paper stated: “Glycerine is  
 22 considered generally safe for oral intake and is used in food production as a  
 23 humectant and as a solution carrier in flavours. However, this does not necessarily  
 24 mean that it is also safe for inhalation – as in e-cigarettes if used as intended.” *Id.* at  
 25 7 - 8.

26 79. As to the other ingredients it described on the FAQ page of the NJOY  
 27 website, Defendant stated, with respect to nicotine that:  
 28

- 1 • Nicotine - is an alkaloid found in *certain plants, predominately*  
2 *tobacco, and in lower quantities, tomatoes, potatoes, eggplants,*  
3 *cauliflower, bell-peppers, and some teas.*

4 80. To draw a parallel between nicotine in e-cigarettes and tomatoes,  
5 potatoes, eggplants, cauliflower, bell-peppers and teas is deceptive and misleading,  
6 as demonstrated by the studies cited *supra* in Section II.

7 81. Finally, Defendant listed the other ingredients of NJOY as unspecified  
8 “Natural and Artificial flavors,” as to which it said:

- 9 • Natural and Artificial Flavors - *determined to be safe for use in*  
10 *food products.*

11 82. This is deceptive and misleading because the website did not disclose  
12 what those “flavors” are, nor did it acknowledge that safety for use in food products  
13 does not denote safety for use in inhaled products, as described above.

14 83. An additional deception by NJOY is that it stated on its website:

15 Regulatory Compliance: NJOY is the only e-cigarette company  
16 to have had its marketing practices reviewed by Federal District  
17 and Appellate Courts and found to have not made or implied  
18 health claims. The FDA is prohibited from restricting NJOY  
19 product imports as a drug or drug delivery device. Other  
20 electronic cigarettes may continue to have importation risks.

21 84. This was a misstatement of the District’s and Appellate Courts’ rulings  
22 in the cases at issue. The only Federal District and Appellate Court decisions  
23 concerning NJOY’s marketing do not hold that NJOY’s marketing practices do not  
24 make or imply health claims. Rather, these cases hold that NJOY has not marketed  
25 its products as “articles intended for use in the diagnosis, cure, mitigation, treatment,  
26 or prevention of disease in man or other animals” or “articles ... intended to affect  
27 the structure or any function of the body of man or other animals,” such that NJOY  
28

would be subject to the “drug/device” provisions of the Food, Drug, and Cosmetic Act (“FDCA”). *See Smoking Everywhere, Inc. v. United States FDA*, 680 F. Supp. 2d 62 (D.D.C. 2010), and, upholding that decision, *Sottera, Inc. v. FDA*, 627 F.3d 891 (D.C. Cir. 2010). Notably, these rulings were issued before NJOY began to market its NJOY E-Cigarettes as the “Resolution Solution,” an obvious reference to tobacco smokers’ resolutions to quit smoking in the new year. To the extent that the statement implies that the FDA or courts have approved NJOY’s past advertising or changes to its advertising after the opinions, it is further misleading.

### **CLASS DEFINITIONS AND ALLEGATIONS**

85. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure (“Rule”) for the purpose of asserting the claims alleged in this Complaint on a common basis. Plaintiffs bring this action on behalf of themselves and all members of the following three classes (the “Classes”) comprised of:

- a. All persons, exclusive of Defendant and its employees, who purchased in or from California one or more NJOY E-Cigarettes, including components thereof, or cartridges or accessories therefor, sold by Defendant during the relevant period (the “California Class”).
- b. All persons, exclusive of Defendant and its employees, who purchased in or from Florida one or more NJOY E-Cigarettes, including components thereof, or cartridges or accessories therefor, sold by Defendant during the relevant period (the “Florida Class”).
- c. All persons, exclusive of Defendant and its employees, who purchased in or from New York one or more NJOY E-Cigarettes, including components thereof, or cartridges or

1                   **accessories therefor, sold by Defendant during the relevant**  
 2                   **period (the “New York Class”).**

3           86. Plaintiffs reserve the right to modify or amend the definitions of the  
 4 Classes after they have had an opportunity to conduct discovery.

5           87. **Numerosity. Rule 23(a)(1).** The members of the Classes are so  
 6 numerous that their individual joinder is impracticable. Plaintiffs are informed and  
 7 believe that the proposed Classes contain at least thousands of purchasers of the  
 8 NJOY E-Cigarettes who have been damaged by Defendant’s conduct as alleged  
 9 herein. The number of the Classes’ members is unknown to Plaintiffs but can be  
 10 discerned from the records maintained by Defendant.

11           88. **Existence of Common Questions of Law and Fact. Rule 23(a)(2).**  
 12 This action involves common questions of law and fact, which include, but are not  
 13 limited to, the following:

- 14           a. Whether the statements made by Defendant as part of its advertising for  
 15 NJOY E-Cigarettes discussed herein are true, or are reasonably likely  
 16 to deceive, given the omissions of material fact described above;
- 17           b. Whether Defendant’s conduct described herein constitutes a deceptive  
 18 act or practice in violation of the CLRA (California Class);
- 19           c. Whether Defendant’s conduct described herein constitutes an unlawful,  
 20 unfair, and/or fraudulent business practice in violation of the UCL  
 21 (California Class);
- 22           d. Whether Defendant’s conduct described herein constitutes unfair,  
 23 deceptive, untrue or misleading advertising in violation of the UCL;
- 24           e. Whether Defendant’s conduct constitutes a breach of express warranty;
- 25           f. Whether Defendant’s conduct described herein constitutes an  
 26 unconscionable, deceptive, or unfair act or practice in violation of  
 27 FDUTPA (Florida Class);

- 1           g. Whether Defendant's conduct described herein constitutes a deceptive  
2           act or practice in violation of the GBL (New York Class);
- 3           h. Whether Plaintiffs and the other members of the Classes are entitled to  
4           damages; and
- 5           i. Whether Plaintiffs and the Classes are entitled to injunctive relief,  
6           restitution or other equitable relief and/or other relief as may be proper.

7           89. **Typicality. Rule 23(a)(3).** All members of the Classes have been  
8           subject to and affected by the same conduct and omissions by Defendant. The  
9           claims alleged herein are based on the same violations by Defendant that harmed  
10          Plaintiffs and members of the Classes. By purchasing NJOY E-Cigarettes during  
11          the relevant time period, all members of the Classes were subjected to the same  
12          wrongful conduct. Plaintiffs' claims are typical of the Classes' claims and do not  
13          conflict with the interests of any other members of the Classes. Defendant's  
14          unlawful, unfair, deceptive, and/or fraudulent actions and breaches of warranty  
15          concern the same business practices described herein irrespective of where they  
16          occurred or were experienced.

17          90. **Adequacy. Rule 23(a)(4).** Plaintiffs will fairly and adequately protect  
18          the interests of the members of the Classes. Plaintiffs have retained counsel  
19          experienced in complex consumer class action litigation, and Plaintiffs intend to  
20          prosecute this action vigorously. Plaintiffs have no adverse or antagonistic interests  
21          to those of the Classes.

22          91. **Injunctive and Declaratory Relief. Rule 23(b)(2).** Defendant's  
23          actions regarding the deceptions and omissions regarding NJOY E-Cigarettes are  
24          uniform as to members of the Classes. Defendant has acted or refused to act on  
25          grounds that apply generally to the Classes, so that final injunctive relief as  
26          requested herein is appropriate respecting the Classes as a whole.

1           92. ***Predominance and Superiority of Class Action. Rule 23(b)(3).***

2 Questions of law or fact common to the Classes predominate over any questions  
3 affecting only individual members and a class action is superior to other methods for  
4 the fast and efficient adjudication of this controversy, for at least the following  
5 reasons:

- 6           a. Absent a class action, members of the Classes as a practical matter will  
7 be unable to obtain redress, Defendant's violations of its legal  
8 obligations will continue without remedy, additional consumers will be  
9 harmed, and Defendant will continue to retain its ill-gotten gains;
- 10          b. It would be a substantial hardship for most individual members of the  
11 Classes if they were forced to prosecute individual actions;
- 12          c. When the liability of Defendant has been adjudicated, the Court will be  
13 able to determine the claims of all members of the Classes;
- 14          d. A class action will permit an orderly and expeditious administration of  
15 each Class members' claims and foster economies of time, effort, and  
16 expense;
- 17          e. A class action regarding the issues in this case does not create any  
18 problems of manageability; and
- 19          f. Defendant has acted on grounds generally applicable to the members of  
20 the Classes, making class-wide monetary relief appropriate.

21           93. Plaintiffs do not contemplate class notice if the Classes are certified  
22 under Rule 23(b)(2), which does not require notice, and notice to the putative  
23 Classes may be accomplished through publication, signs or placards at the point-of-  
24 sale, or other forms of distribution, if necessary, if the Classes are certified under  
25 Rule 23(b)(3) or if the Court otherwise determines class notice is required.  
26 Plaintiffs will, if notice is so required, confer with Defendant and seek to present the  
27 Court with a stipulation and proposed order on the details of a class notice program.  
28



**COUNT I**  
**Injunctive Relief and Damages for Violations of the Consumers Legal  
Remedies Act**  
**(Cal. Civil Code §§ 1750 *et seq.*)**  
**(On Behalf of the California Plaintiffs and the California Class and Against  
Defendant)**

94. The California Plaintiffs repeat and reallege the allegations contained in the paragraphs above, as if fully set forth herein.

95. The relevant period for this Count is January 17, 2011 until judgment is entered.

96. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (“CLRA” or the “Act”), which provides that enumerated listed “unfair methods of competition and unfair or deceptive acts or practices [including those listed below in ¶ 105] undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful,” CLRA § 1770, and that “[a]ny consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against such person to recover or obtain,” various forms of relief, including injunction and damages. Cal. Civ. Code § 1780. This cause of action seeks both injunctive relief and damages on behalf of the California Class.

97. On January 16, 2014, prior to the filing of this Complaint, Plaintiff Halberstam sent Defendant a CLRA notice letter providing the notice required by California Civil Code § 1782(a). Plaintiff Halberstam sent the letter via certified mail, return receipt requested, to the location in Los Angeles where Plaintiff Halberstam purchased NJOY E-Cigarettes, as well as to Defendant’s principal place of business in Arizona, and to the Secretary of State of Nevada, advising Defendant that it is in violation of the CLRA and must correct, replace or otherwise rectify the goods and/or services alleged to be in violation of § 1770. Defendant was further

1 advised that in the event the relief requested has not been provided within thirty (30)  
2 days, Plaintiff Halberstam will amend his Complaint to include a request for  
3 monetary damages pursuant to the CLRA. A true and correct copy of Plaintiff  
4 Halberstam's letter is attached hereto as Exhibit A.

5 98. On February 14, 2014, prior to the filing of Plaintiff McGovern's  
6 complaint,<sup>35</sup> and prior to the consolidation with this Complaint, Plaintiff McGovern  
7 sent Defendant a CLRA notice letter providing the notice required by California  
8 Civil Code § 1782(a). Plaintiff McGovern sent the letter via certified mail, return  
9 receipt requested, to the California Secretary of State, as well as to Defendant's  
10 principal place of business in Arizona and Defendant's place of incorporation. The  
11 letter advised Defendant that it is in violation of the CLRA and must correct, replace  
12 or otherwise rectify the goods and/or services alleged to be in violation of § 1770,  
13 and that in the event the relief requested has not been provided within thirty (30)  
14 days, Plaintiff McGovern will amend his complaint to include a request for  
15 monetary damages pursuant to the CLRA. A true and correct copy of Plaintiff  
16 McGovern's letter is attached hereto as Exhibit B.

17 99. Defendant did not correct, replace, or otherwise rectify the goods  
18 and/or services alleged in either Plaintiff's letter. Therefore, the California Plaintiffs  
19 seek monetary damages pursuant to the CLRA.

20 100. The California Plaintiffs were deceived by Defendant's unlawful  
21 practices as described more fully above, which included carrying out an advertising  
22 campaign, directed at California Plaintiffs and the California Class, conveying the  
23 message that NJOY E-Cigarettes provide "everything you like about smoking  
24

---

25 <sup>35</sup> On February 11, 2014, Plaintiff McGovern filed a complaint against  
26 Defendant in the Superior Court of the State of California in and for the County of  
27 Orange, Case No.: 30-21014-00705711-CU-FR-CXC. On April 29, 2014, this  
28 Court consolidated Plaintiff McGovern's action with this present action.

1 without the things you don't"<sup>36</sup> and variations of that statement, and other  
2 statements that also convey the message that the use of NJOY E-Cigarettes is known  
3 to be safer than smoking traditional cigarettes, or known to be generally safe, which  
4 were deceptive, false and misleading given the ingredients and characteristics of  
5 NJOY products which were or should be known to Defendant, and the studies that  
6 have found carcinogens, toxins, and other potentially harmful impurities in NJOY  
7 E-Cigarettes and electronic cigarettes generally, including certain of those found in  
8 traditional tobacco cigarettes, and that NJOY E-Cigarettes require that the user take  
9 significantly stronger puffs than the puffs required for a traditional cigarette, and  
10 that this could be harmful to health which was not disclosed. Also undisclosed was  
11 the lack of research required to assess the potential danger of electronic cigarettes,  
12 especially in long term users.

13 101. Defendant's actions, representations and conduct have violated, and  
14 continue to violate the CLRA, because they extend to transactions that are intended  
15 to result, or which have resulted, in the sale of goods to consumers.

16 102. Defendant marketed, sold and distributed NJOY E-Cigarettes in  
17 California and throughout the United States during the relevant period.

18 103. The California Plaintiffs and members of the Class are "consumers" as  
19 that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

20 104. Defendant's NJOY E-Cigarettes were and are "good[s]" within the  
21 meaning of Cal. Civ. Code §§ 1761(a) & (b).

22 105. Defendant violated the CLRA by engaging in at least the following  
23 practices proscribed by California Civil Code § 1770(a) in transactions with the  
24 California Plaintiffs and the California Class which were intended to result, and did  
25 result, in the sale of NJOY E-Cigarettes:

---

26 <sup>36</sup> NJOY, <http://www.njoy.com/njoy-kings/njoy-king-3-pack.html> (last visited  
27 Jan. 7, 2014).

1 (5) Representing that [NJOY E-Cigarettes have] . . . approval,  
 2 characteristics . . . uses [or] benefits . . . which [they do] not have . . .

3 \*\*\*

4 (7) Representing that [NJOY E-Cigarettes are] of a particular standard,  
 5 quality or grade . . . if [they are] of another.

6 \*\*\*

7 (9) Advertising goods . . . with intent not to sell them as advertised.

8 106. As such, Defendant's conduct constitutes unfair methods of  
 9 competition and unfair or fraudulent acts or practices because it does not sell, and  
 10 because it intends not to sell, the NJOY E-Cigarettes as Defendant advertised and  
 11 instead misrepresents the particulars by, in its marketing, representing NJOY E-  
 12 Cigarettes as described above when it knew, or should have known, that the  
 13 representations and advertisements were deceptive, false and misleading in light of  
 14 the omissions of material facts as described above.

15 107. The omitted information would have been material to a reasonable  
 16 consumer in his or her decision as to whether to purchase the NJOY E-Cigarettes  
 17 and/or purchase the NJOY E-Cigarettes at the price at which they were offered.

18 108. Defendant had a duty to disclose this information to the California  
 19 Plaintiffs and the members of the California Class for several reasons. First,  
 20 Defendant repeatedly made the representation that its products offer "everything you  
 21 like about smoking without the things you don't," and used other statements that  
 22 also convey the message that the use of NJOY E-Cigarettes is known to be safer  
 23 than smoking traditional cigarettes, or known to be generally safe, as detailed above.  
 24 Disclosure of the omitted information, including information in the studies referred  
 25 to *supra* in Section II, was necessary to avoid the false impression of safety  
 26 provided by such marketing. Second, Defendant was in a position to know, from its  
 27 own product knowledge and creation decisions and the studies, of the presence of  
 28

1 carcinogens, toxins, and other impurities in its NJOY E-Cigarettes, especially as  
2 described in the FDA's 2009 study of NJOY and Smoking Everywhere Products  
3 referenced *supra* at ¶¶ 35-38, while consumers were not reasonably in a position to  
4 be aware of Defendant's internal product information or such studies. Third,  
5 Defendant actively omitted to disclose, or actively concealed, these material facts as  
6 to the California Plaintiffs and the California Class. Finally, while Defendant made  
7 certain specific representations about the risks associated with its NJOY E-  
8 Cigarettes, limited to only that they contain nicotine and bear risks related thereto,  
9 those representations were misleading half-truths because they implied that those are  
10 all of the risks relating to the product, when, in fact, they are not.

11 109. Defendant provided the California Plaintiffs and the other California  
12 Class members with NJOY E-Cigarettes that did not match the quality portrayed by  
13 its marketing.

14 110. As a result, the California Plaintiffs and members of the California  
15 Class have suffered irreparable harm. The California Plaintiffs' and the other  
16 California Class members' injuries were proximately caused by Defendant's  
17 conduct as alleged herein. Plaintiffs Halberstam and McGovern, individually and  
18 on behalf of all other California Class members, seek entry of an order enjoining  
19 Defendant from continuing to employ the unlawful methods, acts and practices  
20 alleged herein pursuant to California Civil Code section 1780(a)(2), awarding  
21 exemplary and punitive damages against Defendant pursuant to California Civil  
22 Code sections 1780(a)(1) and (a)(4), and ordering the payment of costs and  
23 attorneys' fees, and such other relief as deemed appropriate and proper by the Court  
24 under California Civil Code section 1780(a)(2). If Defendant is not restrained from  
25 engaging in these practices in the future, the California Plaintiffs and the California  
26 Class will continue to suffer harm.

27 111. Pursuant to section 1780(d) of the CLRA, attached hereto as Exhibits C  
28

1 and D are affidavits showing that this action has been commenced in the proper  
2 forum.

### 3 **COUNT II**

#### 4 **Injunctive and Equitable Relief for Violations of Unfair Competition Law** 5 **(Cal. Business & Professions Code §§ 17200, *et seq.*)** 6 **(On Behalf of the California Plaintiffs and the California Class and Against** 7 **Defendant)**

8 112. The California Plaintiffs repeat and reallege the allegations contained in  
9 the paragraphs above, as if fully set forth herein.

10 113. The relevant period for this Count is January 17, 2010 until judgment is  
11 entered.

12 114. The Unfair Competition Law, Cal. Business & Professions Code §  
13 17200, *et seq.* (“UCL”), prohibits any “unlawful,” “unfair,” or fraudulent business  
14 act or practice and any false or misleading advertising.

15 115. In the course of conducting business, Defendant committed unlawful  
16 business practices by, *inter alia*, making the representations (which also constitute  
17 advertising within the meaning of § 17200) and omissions of material facts, as set  
18 forth more fully herein, and violating Cal. Civil Code §§ 1750, *et seq.*, and the  
19 common law.

20 116. The California Plaintiffs, individually and on behalf of the other  
21 California Class members, reserve the right to allege other violations of law which  
22 constitute other unlawful business acts or practices. Such conduct is ongoing and  
23 continues to this date.

24 117. Defendant’s actions constitute “unfair” business acts or practices  
25 because, as alleged above, *inter alia*, Defendant engages in deceptive and false  
26 advertising, and misrepresents and omits material facts regarding its electronic  
27 cigarettes and related paraphernalia, and thereby offends an established public  
28 policy, and engages in immoral, unethical, oppressive, and unscrupulous activities  
that are substantially injurious to consumers. This conduct constitutes violations of

1 the unfair prong of Business & Professions Code §§ 17200, *et seq.*

2 118. Business & Professions Code §§ 17200, *et seq.*, also prohibits any  
3 “fraudulent business act or practice.”

4 119. Defendant’s actions, claims, nondisclosures, and misleading  
5 statements, as alleged herein, also constitute “fraudulent” business practices in  
6 violation of the UCL because, among other things, they are false, misleading, and/or  
7 likely to deceive reasonable consumers within the meaning of Business &  
8 Professions Code §§ 17200, *et seq.*

9 120. There were reasonably available alternatives to further Defendant’s  
10 legitimate business interests, other than the conduct described herein.

11 121. As a result of Defendants’ pervasive false marketing, including  
12 deceptive and misleading acts and omissions as detailed herein, the California  
13 Plaintiffs and other members of the California Class have in fact been harmed as  
14 described above. If Defendant had disclosed the information discussed above about  
15 the NJOY E-Cigarettes and otherwise been truthful about their safety, the California  
16 Plaintiffs would not have purchased Defendant’s products. Defendant was also able  
17 to charge more than what its NJOY E-Cigarettes would have been worth had it  
18 disclosed the truth about them.

19 122. As a result of Defendant’s unlawful, unfair, and fraudulent practices,  
20 the California Plaintiffs and the other California Class members have suffered injury  
21 in fact and lost money.

22 123. As a result of its deception, Defendant has been able to reap unjust  
23 revenue and profit in violation of the UCL.

24 124. Unless restrained and enjoined, Defendant will continue to engage in  
25 the above-described conduct. Accordingly, injunctive relief is appropriate for the  
26 California Plaintiffs and the California Class.

27 125. As a result of Defendant’s conduct in violation of the UCL, the  
28



1 California Plaintiffs and members of the California Class have been injured as  
2 alleged herein in amounts to be proven at trial because they purchased NJOY E-  
3 Cigarettes without full disclosure of the material facts discussed above.

4 126. As a result, the California Plaintiffs, individually, and on behalf of the  
5 California Class, and the general public, seek restitution and disgorgement of all  
6 money obtained from the California Plaintiffs and the members of the California  
7 Class collected by Defendant as a result of unlawful, unfair, and/or fraudulent  
8 conduct, and seek injunctive relief, and all other relief this Court deems appropriate,  
9 consistent with Business & Professions Code § 17203.

10  
11 **COUNT III**  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Injunctive Relief and Damages for Breach of the Florida Deceptive and Unfair Trade Practices Act**  
**(Fla. Stat. § 501.201, *et seq.*)**  
**(On Behalf of the Florida Plaintiff and the Florida Class and Against Defendant)**

127. Plaintiff Thomas repeats and realleges the allegations contained in ¶¶ 1-93 above, as if fully set forth herein.

128. The relevant period for this Count is July 9, 2010 until judgment is entered.

129. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201 et seq. (“FDUTPA”), whose purpose is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. §501.202(2).

130. This cause of action is for damages pursuant to Fla. Stat. § 501.211(2). Pursuant to the Act, “a person who has suffered a loss as a result of a violation of this part may recover actual damages, plus attorney's fees and Court costs.” Fla. Stat §501.211(2).

131. Plaintiff Thomas is a consumer as defined by Fla. Stat. §501.203. Plaintiff Thomas and each member of the Florida Class purchased NJOY E-Cigarettes during the relevant period of Defendant’s pervasive false advertising.

132. Defendant is engaged in trade or commerce within the meaning of the Act.

133. Fla. Stat. §501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce . . . .”

134. Defendant has violated the Act by engaging in the unfair and deceptive acts and practices as described herein, which included carrying out an advertising campaign, directed at Plaintiff Thomas and the Florida Class, conveying the

1 message that NJOY E-Cigarettes provide “everything you like about smoking  
2 without the things you don't,”<sup>37</sup> and used other statements that also convey the  
3 message that the use of NJOY E-Cigarettes is known to be safer than smoking  
4 traditional cigarettes, or known to be generally safe, which were deceptive, false and  
5 misleading given the studies that have found carcinogens, toxins, and other  
6 potentially harmful impurities in NJOY E-Cigarettes and electronic cigarettes  
7 generally, including certain of those found in traditional tobacco cigarettes, and that  
8 NJOY E-Cigarettes require that the user take significantly stronger puffs than the  
9 puffs required for a traditional cigarette, and that this could be harmful to health  
10 which was not disclosed. Also undisclosed was the lack of additional research  
11 which such studies have determined is required to assess the potential danger of  
12 electronic cigarettes, especially in long term users, which offend public policies and  
13 are immoral, unethical, unscrupulous and substantially injurious to consumers.

14 135. Plaintiff Thomas and the Florida Class have been aggrieved by  
15 Defendant’s unfair and deceptive acts and practices in that they purchased NJOY E-  
16 Cigarettes. As a result of Defendant’s unfair and deceptive acts and practices, and  
17 unlawful conduct, Plaintiff Thomas and other members of the Florida Class have in  
18 fact been harmed. If Defendant had disclosed the information discussed above  
19 about the NJOY E-Cigarettes and otherwise been truthful about their safety, Plaintiff  
20 Thomas would not have purchased Defendant’s products. In fact, Defendant was  
21 able to charge more than what its NJOY E-Cigarettes would have been worth had it  
22 disclosed the truth about them.

23 136. The damages suffered by Plaintiff Thomas and the Florida Class were  
24 directly and proximately caused by the unfair and deceptive acts and practices of  
25 Defendant, as more fully described herein.

---

26  
27 <sup>37</sup> NJOY, <http://www.njoy.com/njoy-kings/njoy-king-3-pack.html> (last visited Jan. 7, 2014).

1 137. Pursuant to Fla. Stat. § 501.211(1), Plaintiff Thomas and the Florida  
 2 Class seek a declaratory judgment and a court order enjoining the above-described  
 3 wrongful acts and practices of Defendant.

4 138. Additionally, pursuant to Fla. Stat. § 501.211(2) and pursuant to Fla.  
 5 Stat. § 501.2015, Plaintiff Thomas and the Florida Class make claims for damages  
 6 attorneys' fees and costs.

7 **COUNT IV**  
 8 **Injunctive Relief and Damages for Violation of New York General Business**  
 9 **Law**  
 10 **(N.Y. GBL Law § 349)**  
 11 **(On Behalf of the New York Plaintiff and the New York Class and Against**  
 12 **Defendant)**

13 139. Plaintiff Kolano repeats and realleges the allegations contained in ¶¶ 1-  
 14 93 above, as if fully set forth herein.

15 140. The relevant period for this Count is July 9, 2011 until judgment is  
 16 entered.

17 141. This cause of action is brought pursuant to New York General Business  
 18 Law § 349 ("GBL § 349"), which prohibits deceptive acts or practices in the conduct  
 19 of any business, trade or commerce or in the furnishing of any service in New York  
 20 State.

21 142. The conduct of Defendant alleged herein violates GBL § 349 in that  
 22 Defendant engaged in the unfair acts and deceptive practices as described herein,  
 23 which included carrying out an advertising campaign directed at Plaintiff Kolano  
 24 and the New York Class, conveying the message that NJOY E-Cigarettes provide  
 25 "everything you like about smoking without the things you don't"<sup>38</sup> and used other  
 26 statements that also convey the message that the use of NJOY E-Cigarettes is known  
 27 to be safer than smoking traditional cigarettes, or known to be generally safe, which

28 <sup>38</sup> NJOY, <http://www.njoy.com/njoy-kings/njoy-king-3-pack.html> (last visited Jan. 7, 2014).

1 were deceptive, false and misleading given the studies that have found carcinogens,  
2 toxins, and other potentially harmful impurities in NJOY E-Cigarettes and electronic  
3 cigarettes generally, including certain of those found in traditional tobacco  
4 cigarettes, and that NJOY E-Cigarettes require that the user take significantly  
5 stronger puffs than the puffs required for a traditional cigarette, and that this could  
6 be harmful to the health of the user which was not disclosed. Also undisclosed was  
7 the lack of additional research which such studies have determined is required to  
8 assess the potential danger of electronic cigarettes, especially in long term users,  
9 which offend public policies and are immoral, unethical, unscrupulous and  
10 substantially injurious to consumers. Such conduct is inherently and materially  
11 deceptive and misleading in a material respect which was known, or by the exercise  
12 of reasonable care, should have been known, to be untrue, deceptive or misleading  
13 by Defendant.

14 143. The materially misleading conduct of Defendant alleged herein was  
15 directed at the public at large.

16 144. Defendant's acts and practices described above are likely to mislead a  
17 reasonable consumer acting reasonably under the circumstances.

18 145. Defendant has willfully and knowingly violated GBL §349 because, in  
19 order to increase its own profits, Defendant intentionally engaged in deceptive and  
20 false advertising, and misrepresentations and the omission of material facts  
21 regarding its NJOY E-Cigarettes as discussed above.

22 146. As a result of Defendant's deceptive and misleading acts, Plaintiff  
23 Kolano and the members of the New York Class have been injured because they  
24 purchased NJOY E-Cigarettes without full disclosure of the material facts discussed  
25 above.

26 147. As a result of Defendant's conduct in violation of GBL § 349, Plaintiff  
27 Kolano and the members of the New York Class have been injured as alleged herein  
28

1 in amounts to be proven at trial because if Defendant had disclosed the information  
 2 discussed above about the NJOY E-Cigarettes and otherwise been truthful about  
 3 their safety, Plaintiff Kolano would not have purchased Defendant's products.  
 4 Defendant was also able to charge more than what its NJOY E-Cigarettes would  
 5 have been worth had it disclosed the truth about them.

6 148. As a result, pursuant to GBL § 349, Plaintiff Kolano and the New York  
 7 Class are entitled to make claims against Defendant for actual or statutory damages  
 8 to be determined at trial, but not less than fifty (50) dollars per Class member, such  
 9 damages to be trebled.

10 149. Additionally, pursuant to GBL § 349, Plaintiff Kolano and the New York  
 11 Class make claims for attorneys' fees, costs, and injunctive relief requiring  
 12 Defendant to adequately disclose the omitted information described above.

### 13 **COUNT V**

#### 14 **Damages for Breach of Express Warranty (On Behalf of Plaintiffs and the Classes and Against Defendant)**

15 150. Plaintiffs repeat and reallege the allegations contained in ¶¶ 1-93 above,  
 16 as if fully set forth herein.

17 151. The relevant period for this Count is as follows: (i) for the California  
 18 Class: from January 17, 2010 until judgment is entered; (ii) for the Florida Class:  
 19 from July 9, 2009 until judgment is entered; and (iii) for the New York Class: from  
 20 July 9, 2010 until judgment is entered.

21 152. The California Plaintiffs bring this claim individually and on behalf of  
 22 the California Class.

23 153. Plaintiff Thomas brings this claim individually and on behalf of the  
 24 Florida Class.

25 154. Plaintiff Kolano brings this claim individually and on behalf of the New  
 26 York Class.

27 155. Plaintiffs, and each member of the Classes, formed a contract with  
 28

1 Defendant at the time Plaintiffs and the other members of the Classes purchased  
2 NJOY E-Cigarettes or related paraphernalia. The terms of that contract include the  
3 promises and affirmations of fact made by Defendant on its NJOY E-Cigarettes  
4 packaging and inserts and through the NJOY marketing campaign, as described  
5 above. This product packaging and advertising constitute express warranties, became  
6 part of the basis of the bargain, and are part of a standardized contract between  
7 Plaintiffs and the members of the Classes on the one hand, and Defendant on the  
8 other.

9 156. Plaintiffs and the members of the Classes performed their obligations  
10 under the contract.

11 157. Defendant breached the terms of this contract, including the express  
12 warranties, with Plaintiffs and the Classes by not providing NJOY E-Cigarettes that  
13 offered “everything you like about smoking without the things you don’t” and used  
14 other statements that also convey the message that the use of NJOY E-Cigarettes is  
15 known to be safer than smoking traditional cigarettes, or known to be generally safe,  
16 and otherwise omitted material information about potential health risks associated  
17 with the product. Such express warranties breached by Defendant include the NJOY  
18 E-Cigarette representations set forth above in Section III.

19 158. As a result of Defendant’s breach of its contract, Plaintiffs and the  
20 Classes have been damaged in the amount of the purchase price of the NJOY E-  
21 Cigarettes and related paraphernalia they purchased.

### 22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiffs pray for a judgment:

- 24 a. Certifying the Classes as requested herein, appointing Plaintiffs  
25 Halberstam and McGovern as class representatives for the California  
26 Class, appointing Plaintiff Thomas as class representative for the  
27 Florida Class and appointing Plaintiff Kolano as class representative for  
28



1 the New York Class and appointing court appointed interim co-lead  
2 counsel, Wolf Haldenstein Adler Freeman & Herz LLP, Westerman  
3 Law Corporation, and Levi & Korsinsky LLP, as counsel for the  
4 Classes;

- 5 b. Requiring Defendant to disgorge or return all monies, revenues and  
6 profits obtained by means of any wrongful act or practice to Plaintiffs  
7 and the members of the Classes under Cal. Bus. & Prof. Code §§ 17200  
8 et seq, and each other cause of action where such relief is permitted;
  - 9 c. Enjoining Defendant from continuing the unlawful practices as set forth  
10 herein, including marketing or selling NJOY E-Cigarettes without  
11 disclosing the potential health risks relating thereto, and directing  
12 Defendant to engage in corrective action, or providing other injunctive  
13 or equitable relief;
  - 14 d. Pursuant to Fla. Stat. §§ 501.211 and 501.2015, awarding damages to  
15 each member of the Florida Class;
  - 16 e. Pursuant to GBL § 349, awarding actual damages, or fifty (50 dollars,  
17 whichever is greater, to each member of the New York Class, and  
18 trebling damages because Defendant's violations were willful or  
19 knowing;
  - 20 f. Awarding damages pursuant to Cal. Civ. Code § 1780, including  
21 exemplary and punitive damages to prevent and deter Defendant from  
22 future unlawful conduct;
  - 23 g. Awarding damages for breach of express warranty to each member of  
24 the Classes;
  - 25 h. Awarding all equitable remedies available pursuant to Cal. Civ. Code §  
26 1780 and other applicable law;
  - 27 i. Awarding attorneys' fees and costs;
- 28

1 j. Awarding pre-judgment and post-judgment interest at the legal rate;  
2 and

3 k. Providing such further relief as may be just and proper.

4 DATED: July 9, 2014

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**

5  
6 By: /s/ Janine L. Pollack  
7 JANINE L. POLLACK (*pro hac vice*)  
8 pollack@whafh.com  
9 DEMET BASAR (*pro hac vice*)  
10 basar@whafh.com  
11 KATE M. MCGUIRE (*pro hac vice*)  
12 mcguire@whafh.com  
13 270 Madison Avenue  
14 New York, New York 10016  
15 Telephone: 212/545-4600  
16 Facsimile: 212/545-4653

17 **WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**  
18 FRANCIS M. GREGOREK (144785)  
19 gregorek@whafh.com  
20 BETSY C. MANIFOLD (182450)  
21 manifold@whafh.com  
22 RACHELE R. RICKERT (190634)  
23 rickert@whafh.com  
24 MARISA C. LIVESAY (223247)  
25 livesay@whafh.com  
26 750 B Street, Suite 2770  
27 San Diego, CA 92101  
28 Telephone: 619/239-4599  
Facsimile: 619/234-4599

**WESTERMAN LAW CORPORATION**  
JEFF S. WESTERMAN (94559)  
jwesterman@jswlegal.com  
1900 Avenue of the Stars, 11<sup>th</sup> Floor  
Los Angeles, CA 90067  
Telephone: 310/698-7880  
Facsimile: 310/775-9777

**LEVI & KORSINSKY LLP**  
EDUARD KORSINSKY (*pro hac vice*)  
ek@zlk.com  
SHANNON L. HOPKINS (*pro hac vice*)  
shopkins@zlk.com  
NANCY A. KULESA (*pro hac vice*)  
nkulesa@zlk.com  
STEPHANIE A. BARTONE (*pro hac vice*)

1 sbartone@zlk.com  
2 30 Broad Street, 24th Floor  
3 New York, New York 10004  
4 Telephone: 212/363-7500  
5 Facsimile: 866/367-6510

*Interim Class Counsel*

6 **THE WILNER FIRM, P.A.**  
7 RICHARD J. LANTINBERG (*pro hac vice*)  
8 rlantinberg@wilnerfirm.com  
9 444 E. Duval Street  
10 Jacksonville, FL 32202  
11 Telephone: 904/446-9817  
12 Facsimile: 904/446-9825

13 **DORNFELD & NASIS LLP**  
14 ELBERT F. NASIS  
15 enasis@DornfeldNasis.com  
16 145 Marcus Boulevard, Suite 4  
17 Hauppauge, New York 11788  
18 Telephone: 866/578-5438  
19 Facsimile: 631/236-9871

20 **BISNAR CHASE LLP**  
21 BRIAN D. CHASE (164109)  
22 bchase@bisnarchase.com  
23 JERUSALEM F. BELIGAN (211258)  
24 jbeligan@bisnarchase.com  
25 TRAVIS K. SIEGEL (282482)  
26 tsiegel@bisnarchase.com  
27 1301 Dove Street, Suite 120  
28 Newport Beach, CA  
Telephone: 949/752-2999  
Facsimile: 949/752-2777

*Additional Counsel for Plaintiffs*

21 **DEMAND FOR JURY TRIAL**

22 Plaintiffs hereby demand a trial by jury on all issues so triable.

23 DATED: July 9, 2014

24 **WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**

25 By: /s/ Janine L. Pollack  
26 JANINE L. POLLACK (*pro hac vice*)  
27 pollack@whafh.com  
28 DEMET BASAR (*pro hac vice*)  
basar@whafh.com  
KATE M. MCGUIRE (*pro hac vice*)

mcguire@whafh.com  
270 Madison Avenue  
New York, New York 10016  
Telephone: 212/545-4600  
Facsimile: 212/545-4653

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**  
FRANCIS M. GREGOREK (144785)  
gregorek@whafh.com  
BETSY C. MANIFOLD (182450)  
manifold@whafh.com  
RACHELE R. RICKERT (190634)  
rickert@whafh.com  
MARISA C. LIVESAY (223247)  
livesay@whafh.com  
750 B Street, Suite 2770  
San Diego, CA 92101  
Telephone: 619/239-4599  
Facsimile: 619/234-4599

**WESTERMAN LAW CORPORATION**  
JEFF S. WESTERMAN (94559)  
jwesterman@jswlegal.com  
1900 Avenue of the Stars, 11th Floor  
Los Angeles, CA 90067  
Telephone: 310/698-7880  
Facsimile: 310/775-9777

**LEVI & KORSINSKY LLP**  
EDUARD KORSINSKY (*pro hac vice*)  
ek@zlk.com  
SHANNON L. HOPKINS (*pro hac vice*)  
shopkins@zlk.com  
NANCY A. KULESA (*pro hac vice*)  
nkulesa@zlk.com  
STEPHANIE A. BARTONE (*pro hac vice*)  
sbartone@zlk.com  
30 Broad Street, 24th Floor  
New York, New York 10004  
Telephone: 212/363-7500  
Facsimile: 866/367-6510

*Interim Class Counsel*

**THE WILNER FIRM, P.A.**  
RICHARD J. LANTINBERG (*pro hac vice*)  
rlantinberg@wilnerfirm.com  
444 E. Duval Street  
Jacksonville, FL 32202  
Telephone: 904/446-9817  
Facsimile: 904/446-9825

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DORNFELD & NASIS LLP**  
ELBERT F. NASIS  
enasis@DornfeldNasis.com  
145 Marcus Boulevard, Suite 4  
Hauppauge, New York 11788  
Telephone: 866/578-5438  
Facsimile: 631/236-9871

**BISNAR CHASE LLP**  
BRIAN D. CHASE (164109)  
bchase@bisnarchase.com  
JERUSALEM F. BELIGAN (211258)  
jbeligan@bisnarchase.com  
TRAVIS K. SIEGEL (282482)  
tsiegel@bisnarchase.com  
1301 Dove Street, Suite 120  
Newport Beach, CA  
Telephone: 949/752-2999  
Facsimile: 949/752-2777

*Additional Counsel for Plaintiffs*

NJOY:20460v7.complaint

**PROOF OF SERVICE**

I, the undersigned, say:

I am a citizen of the United States and am over the age of 18 and not a party to the within action. My business address is 1900 Avenue of the Stars, 11<sup>th</sup> Floor, Los Angeles, California 90067.

On July 9, 2014, I served the following document:

**SECOND CONSOLIDATED AMENDED COMPLAINT FOR VIOLATIONS OF: (1) CAL. CONSUMERS LEGAL REMEDIES ACT; (2) CAL. UNFAIR COMPETITION LAW; (3) FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT; (4) N.Y. GEN. BUS. LAW; AND (5) BREACH OF EXPRESS WARRANTY**

By posting the document to the ECF Website of the United States District Court for the Central District of California, for receipt electronically.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 9, 2014, at Los Angeles, California.

/s/ Jenna Radomile  
Jenna Radomile